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ABSTRACT

The paper documents regulations issued by New York's Commissioner of Education dealing with children with handicapping conditions. The 15 subsections of the regulations cover: (1) definitions; (2) board of education responsibilities; (3) committee on special education; (4) procedures for referral, evaluation, individualized education program development, placement, and review; (5) procedural due process; (6) continuum of services; (7) educational program standards for handicapped pupils attending private schools and State-operated or State-supported schools; (8) State assistance for instruction of pupils with handicapping conditions; (9) State reimbursement to private schools and special-act school districts; (10) reimbursement to certain State-operated and State-supported schools for blind, deaf, and severely handicapped children; (11) admission to public schools of children residing in facilities of the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities or child care institutions; (12) State assistance for transportation of pupils with handicapping conditions; (13) educational programs for autistic pupils; (14) day treatment programs certified by the Office of Mental Health; and (15) procedures for prevention of abuse, maltreatment, or neglect of children in residential placements. (JDD)

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The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office for Education of Children with Handicapping Conditions
Albany, New York 12234

REGULATIONS OF THE COMMISSIONER OF EDUCATION
SUBCHAPTER P

Pursuant to Sections 207 and 4403 of the Education Law

PART 200—CHILDREN WITH HANDICAPPING CONDITIONS

Effective February 26, 1987

200.1 Definitions. As used in this Part:

(a) *Adaptive behavior* means the effectiveness with which the individual copes with the natural and social demands of his environment.

(b) *Adaptive physical* education means a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of pupils with handicapping conditions who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

(c) *Annual review* means an evaluation, conducted at least annually by the committee on special education, of the status of each pupil with a handicapping condition and each child thought to have a handicapping condition who resides within the school district for the purpose of recommending the continuation, modification or termination of the provision of special education programs and services for the pupil to the board of education.

(d) *Approved private school* means a private school which conforms with the requirements of Federal and State laws and regulations governing the education of pupils with handicapping conditions, and which has been approved by the commissioner for the purpose of contracting with public schools for the instruction of pupils with handicapping conditions.

(e) *Change in program* means a change in any one of the components of phase one of the individualized education program (IEP) of a pupil as described in subparagraphs (2)(iv)-(vii) of subdivision (c) of section 200.4 of this Part.

(f) *Change in placement* means a transfer of a pupil to or from a public school, BOCES, schools enumerated in article 81, 85, 87, 88 or 89 of the Education Law, chapter 566 of the Laws of 1967, or an approved private school.

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(g) *Class size* means the maximum number of pupils who can receive instruction together in a special class or resource room program.

(h) *Committee on special education* (CSE) means a multidisciplinary team established in accordance with the provisions of section 4402 of the Education Law.

(i) *Consent* means:

(1) the parent has been fully informed, in his or her dominant language or other mode of communication, of all information relevant to the activity for which consent is sought, and has been notified of the records of the pupil which will be released and to whom they will be released;

(2) the parent agrees in writing to the activity for which consent is sought; and

(3) the parent is made aware that the consent is voluntary on the part of the parent and may be reconsidered at any time.

(j) *Days* means school workdays, except that during the months of July and August days mean every day except Saturday, Sunday and legal holidays.

(k) *Fiscal year* means the period commencing on the 1st day of July in each year and ending on the 30th day of June next following.

(l) *Full-day session* means a school day with not less than five hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades K through 6, and not less than 5 1/2 hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades 7 through 12.

(m) *Half-day session* means a morning or afternoon session with not less than 2 1/2 hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades K through 6 and not less than three hours of instruction time for pupils whose chronological ages are equivalent to those of pupils in grades 7 through 12.

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(n) *Home and hospital instruction* means special education provided on an individual basis for a pupil with a handicapping condition confined to the home, hospital or other institution because of a handicapping condition.

(o) *Impartial hearing officer* means an individual assigned by a board of education pursuant to Education Law, section 4404 (1), or by the commissioner in accordance with section 200.7(d)(2) of this Part, to hear an appeal and render a decision. An impartial hearing officer shall:

(1) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed; and

(2) for hearings beginning on or after January 1, 1985, have been certified by the commissioner as a hearing officer eligible to conduct hearings pursuant to Education Law section 4404(1). In order to obtain and retain such a certification, an individual shall:

(i) successfully complete a training program, conducted by the department, which program provides information regarding State and Federal laws and regulations relating to the education of pupils with handicapping conditions, the needs of such pupils, and the procedures involved in conducting a hearing, and provides experience in reaching and writing a decision. The duration and content of such program may be varied based upon the participant's previous experience as a hearing officer;

(ii) attain a passing score on a comprehensive written examination designed to evaluate the participant's knowledge and skills as they relate to the responsibilities of an impartial hearing officer; and

(iii) attend such periodic update programs as may be scheduled by the commissioner.

(p) *Individualized education program* (IEP) means a written plan which specifies the special education programs and services to be provided to meet the unique educational needs of a pupil with a handicapping condition.

(q) *Independent evaluation* means an individual evaluation of a pupil thought to have a handicapping condition, conducted by a person who is not employed by the public agency responsible for the education of the pupil.

(r) *Individual evaluation* means any procedures, tests or assessments used selectively with an individual child, including a physical examination in accordance with the provisions of section 904 of the Education Law, an individual psychological evaluation, social history and other suitable examinations and evaluations as may be necessary to determine whether a child has a handicapping condition and the extent of his special education needs, but does not include basic tests administered to, or procedures used with, all pupils in a school grade or class.

(s) *Individual psychological evaluation* means a comprehensive process by which a New York State-certified school psychologist or licensed psychologist uses a variety of psychological and educational techniques and examinations in the pupil's dominant language, to study and describe a pupil's developmental, learning, behavioral and other personality characteristics for the purpose of educational planning.

(t) *Least restrictive environment* means that placement of an individual pupil with a handicapping condition which:

(1) provides the special education needed by the pupil;

(2) provides for education of the pupil to the maximum extent appropriate with other pupils who do not have handicapping conditions; and

(3) is determined following consideration of the proximity of the placement to the pupil's place of residence.

(u) *Medical services* means only evaluative and diagnostic services provided by a licensed physician to determine whether a child has a medically related handicapping condition which may result in the child's need for special education and related services.

(v) *Notice* means written statements in English and translated, when appropriate, into the dominant language or mode of communication of the parent's home, which:

(1) describe the action proposed to be taken by the school district or the committee on special education on behalf of a child thought to have a handicapping condition;

(2) describe any other options considered and explain why the proposed action was selected; and

(3) describe each evaluation, procedure, test, record or report, and any other factors upon which the proposed action was based.

(w) *Occupational therapy* means the functional evaluation of the client and the planning and utilization of a program of purposeful activities to develop or maintain adaptive skills, designed to achieve maximal physical and mental functioning of the patient in his daily life tasks.

(x) *Paraprofessional* means a teacher aide or a teacher assistant as described in section 80.33 of this Title.

(y) *Parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with subdivisions (c) or (d) of section 200.5 of this Part. The term does not include the State if the child is a ward of the State.

(z) *Period* means a minimum of 30 minutes of direct services provided to a pupil with a handicapping condition as recommended by the committee on special education and included in the individualized education program (IEP).

(aa) *Preschool program* means a special education program for pupils with handicapping conditions who are not eligible to attend public schools pursuant to Education Law, section 3202.

(bb) *Physical therapy* means a related service provided in accordance with section 6731(a) of the Education Law.

(cc) *Pupil with a handicapping condition* means a person who has not attained the age of 21 prior to September first and who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical or emotional reasons, has been identified as having a handicapping condition and can receive appropriate educational opportunities from special services and programs approved by the department. This term includes the following classifications:

(1) *Autistic*. A pupil who manifests a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.

(2) *Emotionally disturbed*. A pupil with an inability to learn which cannot be explained by intellectual, sensory or health factors and who exhibits one or more of the following characteristics over a long period of time and to a marked degree:

(i) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(ii) inappropriate types of behavior or feelings under normal circumstances;

(iii) a generally pervasive mood of unhappiness or depression; or

(iv) a tendency to develop physical symptoms or fears associated with personal or school problems.

The term does not include socially maladjusted pupils unless it is determined that they are emotionally disturbed.

(3) *Learning disabled*. A pupil with a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, neurological impairment, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability.

(4) *Mentally retarded*. A pupil who, concurrent with deficits in adaptive behavior, consistently demonstrates general intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation which includes an individual psychological evaluation.

(5) *Deaf*. A pupil with a hearing impairment which is so severe that the pupil is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(6) *Hard of hearing*. A pupil with a hearing impairment, whether permanent or fluctuating, which adversely affects the child's educational perfor-

mance but which is not included under the definition of deaf in this section.

(7) *Speech-impaired*. A pupil with a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(8) *Visually impaired*. A pupil with a visual handicap which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(9) *Orthopedically impaired*. A pupil who is physically handicapped and who has a severe orthopedic impairment, which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures).

(10) *Other health-impaired*. A pupil who is physically handicapped and who has limited strength, vitality or alertness due to chronic or acute health problems, including but not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or tourette syndrome, which adversely affects a pupil's educational performance.

(11) *Multiply handicapped*. A pupil with two or more handicapping conditions that result in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas, the combination of which cause educational problems that cannot be accommodated in a special education program solely for one of the impairments.

(dd) *Related services* pursuant to section 4401 of the Education Law means speech pathology, audiology, psychological services, physical therapy, occupational therapy, counseling services, other appropriate support services including those listed in section 4002 (2)(g) of the Education Law, and medical services as defined in this section.

(ee) *Resource room program* means a special education program for a pupil with a handicapping condition registered in either a special class or regular class who is in need of specialized supplementary instruction in an individual or small group setting for a portion of the school day.

(ff) *Social history* means a report of information gathered and prepared by qualified school district personnel pertaining to the interpersonal, familial, and environmental variables which influence a pupil's general adaptation to school, including but not limited to data on family composition, family history, developmental history of the pupil, health of the pupil, family interaction and school adjustment of the pupil.

(gg) *Special class* means a class consisting of pupils with the same handicapping conditions or with differing handicapping conditions who have been grouped together because of similar educational needs for the purpose of being provided a special education program.

(hh) *Special education* means specially designed individualized or group instruction or special services or programs, as defined in subdivision 2 of section 4401 of the Education Law, provided at no cost to the parent, to meet the individual needs of pupils with handicapping conditions. For purposes of this definition:

(1) The individual needs of a pupil shall be determined by a committee on special education in accordance with the provisions of section 200.4 of this Part upon consideration of the present levels of performance and expected learning outcomes of the pupil. Such individual need determinations shall provide the basis for written annual goals, direction for the provision of appropriate educational programs and services and development of an individualized education program for the pupil. The areas to be considered shall include:

(i) *Academic or educational achievement and learning characteristics* which shall mean the levels of knowledge and development in subject and skill areas, including activities of daily living, level of intellectual functioning, adaptive behavior, expected rate of progress in acquiring skills and information, and learning style;

(ii) *Social development* which shall mean the degree and quality of the pupil's relationships with peers and adults, feelings about self, and social adjustment to school and community environments;

(iii) *Physical development* which shall mean the degree or quality of the pupil's motor and sensory development, health, vitality, and

physical skills or limitations which pertain to the learning process; and

(iv) *Management needs* which shall mean the nature of and degree to which environmental modifications and human or material resources are required to enable the pupil to benefit from instruction. Management needs shall be determined in accordance with the factors identified in each of the three areas described in subparagraphs (i) through (iii) of this paragraph.

(2) Group instruction means instruction of pupils grouped together according to similarity of individual needs for the purpose of special education. The curriculum and instruction provided to such groups shall be consistent with the individual needs of each pupil in the group, and the instruction required to meet the individual needs of any one pupil in the group shall not consistently detract from the instruction provided other pupils in the group.

(ii) *Special education teacher* means a person, including an itinerant teacher, certified or licensed to teach pupils with handicapping conditions.

(jj) *Surrogate parent* means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the State.

(kk) *Transitional support services* means those temporary services, specified in a pupil's individualized education program (IEP), provided to a regular or special education teacher to aid in the provision of appropriate services to a pupil with a handicapping condition transferring to a regular program or to a program or service in a less restrictive environment.

(ll) *Twelve-month educational program* means a special education instructional program provided on a year-round basis, including at least 30 days during the months of July and August, for students determined to be eligible for such programs in accordance with paragraph (1) of subdivision (j) of section 200.6 of this Part whose handicapping conditions require a structured learning environment of 12 months duration to maintain developmental levels.

200.2 Board of education responsibilities.

(a) *Census and register of pupils with handicapping conditions.*

(1) The board of education or trustees of each school district shall conduct a census in accordance with Education Law, sections 3240, 3241 and 3242 to locate and identify all children with handicapping conditions who reside in the district and shall establish a register of such children who are entitled to attend the public schools of the district during the next school year. The register of such children and others referred to the committee as possibly having a handicapping condition shall be maintained and revised annually by the district committee on special education. Procedures shall be implemented to assure the availability of statistical data to readily determine the status of each pupil with a handicapping condition in the identification, location, evaluation, placement and program review process. Census data shall be reported by October 1st to the committee on special education.

(2) Data requirements.

(i) Procedures shall be designed to record data on each pupil, and shall include at least the following types of data:

(a) pupil's name, address and birthdate;

(b) pupil's parents' names, address(es), and the dominant language of the pupil's home;

(c) pupil's suspected handicapping condition;

(d) dates of referral, evaluations, recommendations of the committee on special education, actual placement, and annual program reviews;

(e) site where the pupil is currently receiving an educational program; and

(f) if the pupil is not receiving an appropriate public education, the reason shall be described.

(ii) The data shall be organized so that it can readily be determined whether each pupil is receiving an appropriate public education, a partial education or no education at all.

(3) Data collection. All persons involved in the collection of data shall have received prior training and written information regarding the procedures to be followed in collecting the data.

(4) Data reporting. The reporting of data shall be conducted in accordance with the following policies and procedures:

(i) School districts shall prepare, and keep on file, summary reports of pupil data, including numbers of pupils who are:

(a) unserved and the reasons they are unserved; and

(b) served.

(ii) A summary report of the pupils served shall be submitted by local school districts to the State Education Department on prescribed forms.

(5) The board of education or trustees of each school district shall keep on file the register and related summary reports which shall be available to the district superintendent of the supervisory district in which the district is located or other representatives of the State Education Department.

(6) Paragraphs (1)-(5) of this subdivision shall not apply to schools and pupils subject to the provisions of articles 81, 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974. Schools subject to the provisions of such articles and chapter shall keep their own census of pupils, and shall submit such census directly to the commissioner on forms prescribed by the commissioner.

(b) *Written policy*. Each board of education shall adopt written policy that:

(1) establishes administrative practices and procedures to ensure that

pupils with handicapping conditions residing in the district have the opportunity to participate in school district programs, including extracurricular programs and activities, which are available to all other pupils enrolled in the public schools of the district;

(2) establishes administrative practices and procedures for appointing and training appropriately qualified personnel, including the members and chairperson of the committee on special education, to carry out the functions identified in this Part; and

(3) establishes administrative practices and procedures to implement the provisions of section 200.6(a) of this Part.

(c) *District plans*.

(1) Each board of education which receives an apportionment for eligible pupils with handicapping conditions, pursuant to subdivision 19 of section 3602 of the Education Law, shall use such apportionments for special education programs and services which are in accordance with the provisions of this Part. Each board of education which receives such apportionment shall prepare satisfactory plans by November 1, 1988 and by November first every second year thereafter.

(2) Each such plan shall include, but need not be limited to, the following:

(i) a description of the nature and scope of special education programs and services currently available to pupils residing in the district, including but not limited to descriptions of the district's resource room programs and each special class program provided by the district in terms of group size and composition;

(ii) identification of the number and age span of pupils to be served by type of handicapping condition, and recommended setting;

(iii) the method to be used to evaluate the extent to which the objectives of the program have been achieved;

(iv) a description of the policies and practices of the board of education to ensure the allocation of appropriate space within the district for special education programs that meet the needs of students with handicapping conditions;

(v) a description of the policies and practices of the board of education to ensure that appropriate space will be available to meet the needs of resident students with handicapping conditions who attend special education programs provided by boards of cooperative educational services;

(vi) the estimated budget to support such plan; and

(vii) the date on which such plan was adopted by the board of education.

(3) The district plan, with personally identifiable pupil information deleted, shall be filed and available for public inspection and review by the commissioner.

(d) *Approval of services*. The board of education or board of trustees of each school district shall, upon completion of phase I of the IEP, determine the appropriate special education programs and services to be provided to a pupil with a handicapping condition, after consideration of the recommendations of the committee on special education. The board shall notify the parent of its action in accordance with section 4402(2)(b)(2) of the Education Law.

(e) *Maintenance of lists*. The board of education or trustees of each school district shall establish a list of:

(1) the names of persons appearing on a list of impartial hearing officers certified by the Commissioner of Education pursuant to section 200.1(o)(2) of this Part, from which the district shall choose an impartial hearing officer; and

(2) persons from whom the district shall choose a surrogate parent.

(f) *Responsibilities of boards of education which provide education pursuant to part II of article 41 of the Education Law (sections 2040-2045)*. Where a board of education provides for the education of all of its students, or of all of its students of any particular grade, by contracting with another board of education pursuant to section 2040 or 2045 of the Education Law, the committee on special education of the receiving school district shall serve as the committee on special education for all children so placed in such receiving school district.

200.3 Committee on special education.

(a) Each board of education or board of trustees, and each child care institution as defined in Education Law section 4001, which maintains a school shall appoint a committee on special education in accordance with the provisions of Education Law section 4402.

(b) The board of education may appoint one or more subcommittees to assist the committee on special education in accordance with the provisions of this subdivision.

(1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on special education.

(2) A subcommittee may be appointed in accordance with the provisions of this subdivision to perform the duties set forth in Education Law section 4005.

(3) The membership of each subcommittee shall be similar in composition to that of the committee on special education.

(4) Each subcommittee may perform the functions for which the committee on special education is responsible pursuant to the provisions of Education Law section 4402, provided that in school districts other than city school districts in cities having a population in excess of 125,000 inhabitants, the subcommittee shall refer to the committee any matter in which the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to a pupil is not acceptable to the parent or legal guardian of such pupil.

(5) Each subcommittee shall report annually the status of each pupil with a handicapping condition within its jurisdiction to the committee on special education.

200.4 Procedures for referral, evaluation, individualized education program (IEP) development, placement and review.

(a) *Referral*. A pupil suspected of having a handicapping condition shall be referred in writing to the chairperson of the district's committee on special education or to the building administrator of the school which the pupil attends or is eligible to attend for an individual evaluation and determination of eligibility for special education programs and services.

(1) A referral may be made by:

(i) a pupil's parent or person in parental relationship;

(ii) a professional staff member of the school district in which the pupil resides, or the public or private school the pupil legally attends;

(iii) a licensed physician;

(iv) a judicial officer;

(v) the commissioner or designee of a public agency with responsibility for welfare, health or education of children; or

(vi) for purposes of referring one's self, a pupil who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.

(2) A referral submitted by persons other than the parent, pupil or a judicial officer shall:

(i) state the reasons for the referral and include any test results, records or reports upon which the referral is based that may be in the possession of the person submitting the referral;

(ii) describe attempts to remediate the pupil's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reasons why no such attempts were made; and

(iii) describe the extent of parental contact or involvement prior to the referral.

(3) The *date of receipt of a referral* means the date on which either the committee chairperson or the building administrator receives the referral, whichever is earlier.

(4) If a referral is received by the building administrator, it shall be forwarded to the committee chairperson immediately upon its receipt by the administrator.

(5) If a referral is received by the committee chairperson, a copy shall be forwarded to the building administrator within five days of its receipt by the committee chairperson.

(6) A committee chairperson who receives a referral shall immediately notify the parent pursuant to section 200.5(a) of this Part .

(7) In the event that the parent and the person submitting the referral agree in writing pursuant to section 200.5(b) of this Part that the referral shall be withdrawn, the chairperson of the committee on special education shall provide the parent and the referring person a copy of the agreement. Each such agreement shall specify any alternative methods suggested to resolve the identified learning difficulty of the pupil and shall provide the opportunity for a follow-up conference within an agreed period of time to review the pupil's progress. A copy of the agreement shall also be placed in the pupil's cumulative educational record file.

(8) In the absence of a written agreement to withdraw a referral, as described in paragraph (7) of this subdivision, and in the event that parental consent is not obtained within 30 days of the date of receipt of referral, the chairperson shall document attempts made by the chairperson or other representatives of the committee to obtain parental consent, and shall request that the board of education initiate an impartial hearing in accordance with section 200.5 (b)(2) of this Part.

(9) The building administrator, upon receipt of a referral or copy of a referral, may request a meeting with the parent or person in parental relationship to the pupil, and the pupil, if appropriate, to determine whether the pupil would benefit from alternatives to special education, including the provision of educationally related support services, speech and language improvement services, and remedial instruction. If the person making the referral is a professional staff member of the school district in which the child resides, that person shall attend such meeting. The building administrator shall ensure that the parent understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. Any other person making a referral shall have the opportunity to attend such meeting. If at such meeting the parent or person in parental relationship and the building administrator agree in writing that, with the provision of alternatives to special education, the referral is unwarranted, the referral shall be deemed withdrawn, and the building administrator shall provide the chairperson of the committee on special education, the person who made the referral if a professional staff member of the school district, the parent or person in parental relationship to the pupil, and the pupil, if appropriate, with copies of the agreement. The copy of the agreement provided to the parent or person in parental relationship shall be in the dominant language of such person. Such agreement shall contain a description of the alternative educational program to be provided and the proposed duration of such program. A copy of the agreement shall also be placed in the pupil's cumulative education record file. The meeting:

(i) shall be conducted within 10 days of the building administrator's receipt of the referral; and

(ii) shall not impede a committee on special education from continuing its duties and functions under this Part.

(b) *Individual evaluation*. (1) Unless the referral is withdrawn pursuant to paragraph (a)(7) or (9) of this section, an individual evaluation of the referred pupil shall be initiated by a committee on special education and shall include, at no cost to the parent, at least a physical examination in accordance with the provisions of section 904 of the Education Law, an individual psychological examination, a social history and other suitable examinations and evaluations as may be necessary to ascertain the physical, mental and emotional factors which contribute to the suspected handicapping conditions.

(2) School districts shall ensure that:

(i) tests and other assessment procedures:

(a) are provided and administered in the child's dominant language or other mode of communication, unless it is clearly not feasible to do so;

(b) have been validated for the specific purpose for which they are used; and

(c) are administered by trained personnel in accordance with the instruction provided by those who developed such tests or procedures.

(ii) tests and other assessment procedures include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient;

(iii) tests are selected and administered to ensure that, when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, except where those skills are factors which the test purports to measure;

(iv) no single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(v) the evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with certification or knowledge in the area of the suspected disability;

(vi) the child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, vocational skills, communicative status and motor abilities;

(vii) the evaluation includes observation of the pupil in the current educational setting; and

(viii) the results of the evaluation are provided to the parents or persons in parental relationship in their dominant language.

(c) *Recommendation*. Individualized education program (IEP)-phase I. For a pupil not previously identified as having a handicapping condition, the committee on special education shall provide a recommendation to the board of education within 30 days of the date of receipt of consent, or within 40 days of the date of receipt of referral, whichever period shall end earlier. For a pupil with a handicapping condition referred for review pursuant to paragraph (6) of subdivision (e) of this section, a recommendation shall be provided within 30 days. Prior to the development of a recommendation, the committee shall ensure that the appropriateness of the resources of the regular education program, including educationally related support services, speech and language improvement services, and remedial instruction, have been considered.

(1) If the pupil has been determined to be ineligible for special education, the recommendation shall indicate the reasons the pupil was found ineligible.

(i) A copy of the recommendation and appropriate evaluation information shall be provided to the building administrator. The building administrator shall determine which educationally related support services, if appropriate, shall be provided to the pupil, and, to the extent available, shall ensure that such services are provided pursuant to section 100.2(v) of this Chapter.

(ii) A copy of the recommendation shall be provided to the parent pursuant to section 200.5(a) of this Part.

(iii) If the pupil has been receiving special education services, but it is determined by the committee on special education that the pupil no longer needs special education services and can be placed in a regular educational program on a full-time basis, the recommendation shall:

(a) identify the declassification support services, as defined in section 100.1(q) of this Chapter, if any, to be provided to the pupil and/or the pupil's teachers; and

(b) indicate the projected date of initiation of such services, the frequency of provision of such services, and the duration of such services, provided that such services shall not continue for more than one year after the student enters the full-time regular education program.

(2) If the pupil has been determined to be eligible for special education services, the recommendation shall:

(i) report the present levels of performance and indicate the individual needs of the pupil according to each of the four areas listed in section 200.1(hh) of this Part;

(ii) indicate the classification of the handicapping condition;

(iii) list annual goals that are consistent with the pupil's needs and abilities and, for pupils first entering special education, instructional objectives and evaluative criteria to be followed during the period beginning with placement and ending with completion of Phase II of the IEP in accordance with subdivisions (d) and (e) of this section;

(iv) indicate the recommended program from the options set forth in section 200.6 of this Part, the class size, if appropriate, and the extent to which the pupil will participate in regular education programs, including physical education or adaptive physical education and, when appropriate, occupational education;

(v) indicate the projected date for initiation of special education and related services, the amount of time per day the pupil will receive such services, whether the pupil is eligible for a twelve-month educational program and the identity of the provider of services during the months of July and August, and the projected date of the review of the pupil's need for such services;

(vi) describe any specialized equipment and adaptive devices needed for the pupil to benefit from education;

(vii) list those testing modifications to be used consistently by the pupil in the recommended educational program; and

(viii) indicate the recommended placement.

(3) Such recommendations shall be developed in meetings of the committee on special education. The pupil's teacher shall attend such meetings. The pupil's parent and, where appropriate, the pupil shall be given an opportunity to attend the meeting. The committee shall ensure that the parent understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. If the recommended placement is to be in a school operated by an agency or school other than the school district in which the pupil would normally attend if the pupil did not have a handicapping condition, or if the education of a pupil residing in a facility operated or supervised by a State department or agency is the responsibility of the school district, a representative of that agency or school shall be given the opportunity to attend. In the event that such persons are unable to attend such meetings, the committee shall attempt alternative means allowing for their participation, such as individual or conference telephone discussions, and such attempts shall be documented.

(4) A report of the evaluation upon which the recommendation is based shall be forwarded to the board of education along with the recommendation.

(5) In the event that the parent does not choose to participate in the development of such recommendations, the committee shall forward its recommendation to the board of education and the parent as otherwise required by this subdivision.

(d) Within 30 days of the receipt of the recommendations of the committee on special education, the board of education shall provide appropriate special programs and services. For a pupil initially entering special education, the provision of a special education program shall be for continuing evaluation and completion of the individualized education program (IEP) in the recommended setting and shall be with the consent of the parent pursuant to section 200.5(b) of this Part. For a pupil initially recommended for a twelve-month educational program, parental consent is required to provide special services and programs during the months of July and August. A copy of phase I of the IEP shall be provided to the appropriate teachers and supervisors of the recommended special education programs and services for use in the development of phase II of the IEP in accordance with subdivision (e) of this section.

(e) *Planning conference*. Individualized education program (IEP)-phase II. Planning conferences to develop the individualized education program (IEP) shall be conducted at least annually in accordance with the following provisions:

(1) The conference for each pupil newly identified as having a handicapping condition shall be conducted as soon as possible, but no later than 30 days after the pupil enters the recommended special education program.

(2) Participants at the planning conference shall include the pupil's teacher, the pupil whenever appropriate, the parent or legal guardian, and other individuals at the discretion of the parent or agency. The agency shall ensure that the parent understands the proceedings at the meeting and shall arrange for the presence of an interpreter, if necessary. If the pupil is not in a district-operated program, a representative of

the school district responsible for the development of phase I of the IEP who is qualified to provide or supervise the provision of special education shall be given the opportunity to attend. A representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education shall also be given the opportunity to attend the initial planning conference and shall attend each subsequent planning conference for such pupil. A member of the evaluation team, or a person who is knowledgeable about the evaluation procedures used with the pupil, shall also be given the opportunity to attend the planning conference for a pupil who is being placed for the first time.

(3) A notice of the planning conference shall be given to the parent or legal guardian of the pupil, at least five days prior to the proposed date of the conference, which shall state the time, location and date that the conference will be conducted.

(4) If it is not possible or practicable to establish a mutually agreeable time for the parent or legal guardian to attend the conference, other alternatives, including but not limited to individual or conference telephone discussions, shall be attempted.

(5) The planning conference shall result in the following additions to the individualized education program (IEP) developed during phase I:

(i) a statement of short-term objectives consistent with the annual goals for the pupil; and

(ii) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved.

(6) If the pupil's parent, teacher or an administrator of the school or agency believes that the program or placement recommended in the individualized education program (IEP) is no longer appropriate, such party may refer the pupil to the committee on special education for review, provided that the pupil shall remain in the current placement pending a new recommendation of the committee on special education, unless the board and parent otherwise agree.

(f) *Annual review and triennial evaluation*. The individualized education program (IEP) of each pupil with handicapping condition shall be reviewed and, if appropriate, revised, periodically but not less than annually.

(1) The annual review of each pupil with a handicapping condition to be conducted by the committee on special education or subcommittee thereof, pursuant to section 4402(1)(b)(2) of the Education Law, shall be based upon a review of a pupil's individualized education program (IEP) and other current information pertaining to the pupil's performance.

(2) Prior to the annual review, the committee on special education shall notify the parent of its intent to review the pupil's program and placement in accordance with subdivision 200.5(a) of this Part.

(3) Upon completion of the annual review, the committee on special education shall notify the parents of the committee's recommendations in accordance with subdivision 200.5(a)(4) of this Part.

(4) A committee on special education shall arrange for an appropriate reexamination of each pupil with a handicapping condition at least every three years by a physician, a school psychologist, and, to the extent required by the committee on special education, by other qualified appropriate professionals. The triennial evaluation shall be sufficient to determine the pupil's individual needs and continuing eligibility for special education.

(g) *Requests to the committee on special education pursuant to section 4005 of the Education Law.*

(1) If, pursuant to section 4005 of the Education Law, a committee on special education receives a written request for evaluative information and program recommendations for a pupil from a Family Court judge, a probation department, a social services district, the Division for Youth, or a preadmission certification committee established pursuant to section 9.51(d) of the Mental Hygiene Law, the committee shall provide such information and recommendation to the requesting agency within 30 days of the date of receipt of such a request, provided that the committee on special education can obtain the consent of the pupil's parent to conduct an evaluation.

(2) A committee on special education which receives such a request shall:

(i) forward a copy of the agency's request, as well as a request for parental consent for an

evaluation, to the parent of the pupil at the address indicated in the request from the agency;

(ii) in the event that the parent does not grant consent, within 5 days after receipt of the request for such consent, the committee shall notify the board of education of the need to initiate a formal impartial hearing to be conducted pursuant to subdivision (c) of this section, to permit the district to conduct an evaluation of the pupil without the consent of the parent;

(iii) if consent has been obtained, conduct an evaluation comparable to that described in subdivision (b) of this section; and

(iv) develop a written recommendation which:

(a) indicates the reasons for determining that no handicapping condition exists; or

(b) if the child is determined to have a handicapping condition, indicates the following:

*(1)*the present levels of performance and the pupil's individual needs according to each of the four criteria listed in section 200.6(f)(2) of this Part;

*(2)*the classification of the handicapping condition;

*(3)*the annual goals that are consistent with the pupil's needs and abilities;

*(4)*the recommended program from the options set forth in section 200.6 of this Part, the class size, if appropriate, and the extent to which the pupil may participate in regular education programs, including occupational education when appropriate;

*(5)*the specialized equipment and adaptive devices needed for the pupil to benefit from education; and

*(6)*those testing modifications to be used consistently by the pupil in the recommended educational program.

(3) The committee shall forward a copy of the evaluation and recommendation to the requesting agency and to the board of education.

(h) Pursuant to Education Law, section 4407(1), during the school year in which a student, who is placed in accordance with article 89 of the Education Law in an out-of-state school, attains the age of 18, the committee on special education shall notify in writing the parents, or the student where appropriate, of the date upon which the student will no longer be eligible for tuition-free educational services as such date is determined in accordance with Education Law, section 4402(5).

(1) The notice, which shall be on a form prescribed by the Commissioner of Education, shall:

(i) be sent to the parent, or the student where appropriate, by November 1st of the school year within which the student will attain the age of 18, or upon the date of placement in the out-of-state school, whichever is later;

(ii) describe in detail the opportunity for assistance to the parent or student by the Council on Children and Families and its member agencies, as defined in Executive Law, section 441(4), in determining the student's need for adult services, and in planning and coordinating the student's return to New York State for such services;

(iii) provide for the parent's or student's written consent for:

(a) the committee's release of relevant information, as such term is defined in paragraph (c)(1) of section 4407 of the Education Law, to the Commissioner of Education for the purposes set forth in such paragraph;

(b) the department's review of such information received from the committee and its release, together with such additional relevant information and recommendations as the department may have, to the Council on Children and Families for the purposes set forth in paragraphs (d) and (e) of subdivision 1 of section 4407 of the Education Law; and

(c) the council's review of such information and recommendations received from the commissioner and their release to its member agencies, as defined in Executive Law, section 441(4) and to any public or private agency providing services to individuals with handicapping or disabling conditions;

(iv) state that within 10 days of the date of receipt of consent the school district shall forward all relevant information in its possession to the Commissioner of Education or,

if consent is withheld, report within 30 days of the date of the notice to the commissioner that consent has been withheld;

(v) state that the commissioner will, within 30 days of its receipt, forward all information received from the school district to the Council on Children and Families, together with such additional relevant information as the department may have and his recommendations concerning the student's need for and the planning of adult services;

(vi) state that in the event consent is withheld, the notice will be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(2) In addition to the requirements of paragraph (1) of this subdivision, the notice to the parents or students shall:

(i) identify all the documents to be forwarded by the committee to the Commissioner of Education;

(ii) afford the parent the opportunity to review the information to be forwarded and to provide additional relevant information that may be in the parent's possession; and

(iii) provide assurances of the confidentiality of personally identifiable data which shall be in accordance with subdivision (f) of section 200.5 of this Part and section 247.4 of this Title.

(3) Notwithstanding the provisions of subparagraph (i) of paragraph (l) of this subdivision, for students who attain the age of 18 during the 1982-83 school year, the notice described in this subdivision shall be sent to the parent, or the student where appropriate, within 30 days following the effective date of this subdivision.

(i) Pursuant to Education Law, section 4402(1), during the school year in which a student, who is placed in accordance with article 89 or article 81 of the Education Law in a residential school program in an in-state school, attains the age of 18, the committee on special education responsible for reviewing such placement shall notify, in writing, the parents or the student, where appropriate, of the date upon which the student will no longer be eligible for tuition-free educational services as such date is determined in accordance with Education Law, section 4402 (l)(b)(5) or by the date of receipt of a high school diploma, whichever is earlier.

(1) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) be sent to the parent, or the student where appropriate, by November 1st of the school year within which the student will attain the age of 18, or upon the date of placement in the residential program, whichever is later;

(ii) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(5)(a), at least 6 months before such student attains the age of 21, a determination of the student's need for adult services and a recommendation of all appropriate programs operated, approved, authorized, or licensed by that agency which may be available when the student becomes ineligible for a free public education;

(iii) provide for the parent's or student's, where appropriate, written consent for the committee's release of relevant information, as such term is defined in section 4402(1)(b)(5) of the Education Law, in a report to the Commissioner of Mental Health, Commissioner of Mental Retardation and Developmental Disabilities, Commissioner of Social Services, or Commissioner of Education or their designees, as determined to be appropriate by the committee on special education. The notice shall also provide for the release of such information to the Council on Children and Families if there is a dispute as to the appropriate agency;

(iv) state that:

(a) within 10 days of the date of receipt of consent, the school district shall forward the report, including all relevant information in its possession, to the appropriate commissioner, or his designee;

(b) in the event that the committee is notified by the commissioner of the State agency receiving the report that such agency is not responsible for determining the need for and recommending adult services for the student, the committee shall forward the report to another of the commissioners identified in subparagraph (iii) of this paragraph, or,

if there exists a dispute as to which agency may be responsible, shall forward the report to the Council on Children and Families for a resolution of the dispute;

(c) a copy of each report sent to a State office or agency pursuant to clauses (a) or (b) of this subparagraph shall be forwarded also to the Commissioner of Education; and

(v) state that in the event consent is withheld, the notice will be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(2) In addition to the requirements of paragraph (1) of this subdivision, the notice to the parent, or student, where appropriate, shall:

(i) identify all the documents to be forwarded by the committee pursuant to paragraph (1) of this subdivision;

(ii) inform the person notified of the opportunity to review the information to be forwarded and to provide additional relevant information that may be in that person's possession; and

(iii) provide assurances of the confidentiality of personally identifiable data which shall be in accordance with section 200.5(f) of this Part and section 247.4 of this Title, as applicable.

(3) On or before October 1st of each year, the committee on special education shall prepare and submit an annual report to the Commissioner of Education, the form and content of which shall be prescribed by the commissioner in accordance with the provisions of section 4402 (l)(b)(5)(e) of the Education Law.

(4) For students placed in a State-operated or State-supported school in accordance with articles 85, 87 or 88 of the Education Law or Chapter 1060 of the Laws of 1974, the evaluation team of such school responsible for reviewing such placement therein shall carry out the provisions of this subdivision.

(j) Pursuant to Education Law, section 4402(1)(b)(6), upon the first annual review after the age of 15 of a child who is placed in a nonresidential school program in accordance with article 89 of the Education Law, is receiving special services or programs 100 percent of the school day, is receiving individualized attention or intervention because of intensive management needs or a severe handicapping condition, and who may need adult services as determined by the committee on special education following appropriate review of the student's physical, mental, emotional and educational history, the committee on special education shall notify the parents, or the student, where appropriate, in writing of the date upon which the student will no longer be eligible for tuition-free educational services as such date is determined in accordance with Education Law, section 4402(1)(b)(6).

(1) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(6)(a), at least 6 months before such student attains the age of 21, a determination of the student's need for adult services and a recommendation of all appropriate programs operated, approved, authorized, or licensed by that agency which may be available when the student becomes ineligible for a free public education;

(ii) provide for the parent's or student's, where appropriate, written consent for the committee's release of relevant information, as such term is defined in section 4402(1)(b)(6) of the Education Law, in a report to the Commissioner of Mental Health, Commissioner of Mental Retardation and Developmental Disabilities or Commissioner of Education or their designees, as determined to be appropriate by the committee on special education. The notice shall also provide for the release of such information to the Council on Children and Families if there is a dispute as to the appropriate agency;

(iii) state that:

(a) within 10 days of the date of receipt of consent, the school district shall forward the report, including all relevant information in its possession, to the appropriate commissioner, or his designee;

(b) in the event that the committee is notified by the commissioner of the State agency receiving the report that such agency is not responsible for determin-

ing the need for and recommending adult services for the student, the committee shall forward the report to another of the commissioners identified in subparagraph (ii) of this paragraph, or, if there exists a dispute as to which agency may be responsible, shall forward the report to the Council on Children and Families for a resolution of the dispute; and

(c) a copy of each report sent to a State office or agency pursuant to clauses (a) or (b) of this subparagraph shall be forwarded also to the Commissioner of Education; and

(iv) state that in the event consent is withheld, the notice will be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(2) In addition to the requirements of paragraph (1) of this subdivision, the notice to the parent, or student where appropriate, shall:

(i) identify all the documents to be forwarded by the committee pursuant to paragraph (1) of this subdivision;

(ii) inform the person notified of the opportunity to review the information to be forwarded and to provide additional relevant information that may be in that person's possession; and

(iii) provide assurances of the confidentiality of personally identifiable data which shall be in accordance with section 200.5(f) of this Part and section 247.4 of this Title, as applicable.

(3) The committee on special education shall forward additional and updated relevant information to the Commissioner of Mental Health, Commissioner of Mental Retardation and Developmental Disabilities or Commissioner of Education or their designees upon the request for such information by such commissioner or designee and upon obtaining appropriate consent.

(4) On or before October 1st of each year, the committee on special education shall prepare and submit an annual report to the Commissioner of Education, the form and content of which shall be prescribed by the commissioner in accordance with the provisions of section 4402(1)(b)(6)(e) of the Education Law.

200.5 Procedural due process.

(a) *Notice.*

(1) Notice of initial evaluation, review or reevaluation. A chairperson of a committee on special education shall, upon receipt of a referral of a pupil for an initial evaluation or prior to initiating a review or reevaluation, notify the parent in writing that evaluative information is being sought or a review will be conducted regarding the pupil. Such notice shall:

(i) include a description of the proposed evaluation or review and the uses to be made of the information;

(ii) state that the school files, records and reports pertaining to the pupil will be available to the parent for inspection and interpretation. Such records shall be available for duplication at a reasonable cost;

(iii) indicate that the parent shall have the opportunity to participate in meetings of the committee on special education for the purpose of developing recommendations in accordance with the provisions of section 200.4(c) of this Part, and that the parent may be accompanied at such meetings by such individuals as the parent may desire;

(iv) inform the parent of his or her right to request the presence of the school physician member of the committee on special education at any meeting of such committee pursuant to section 4402(1)(b)(l) of the Education Law;

(v) indicate that the parent may submit evaluation information which, if submitted, shall be considered by the committee as part of its evaluation or review;

(vi) indicate that:

(a) if the parent disagrees with the evaluation obtained by the school district, the parent has a right to obtain an independent educational evaluation at public expense. However, the school district may initiate an impartial hearing to show that its evaluation is appropriate and, if the hearing officer determines that the evaluation is appropriate, the parent has a right to an independent evaluation, but not at public expense;

(b) upon request, the parent shall be provided the names, addresses and tele-

phone numbers of appropriate public and private agencies and other professional resources where independent educational evaluations may be obtained; and

(vii) request parental consent to the proposed evaluation of a pupil not previously identified as having a handicapping condition.

(2) In addition to the requirements of paragraph (1) of this subdivision, the notice shall, for parents of pupils referred to the committee on special education for the first time:

(i) advise the parent of the right to consent or withhold consent to an initial evaluation or placement of a pupil who has not been previously identified as having a handicapping condition;

(ii) describe in detail the right to obtain a hearing in accordance with the provisions of subdivision (c) of this section;

(iii) include a statement of procedures for appealing the decision resulting from the formal hearing;

(iv) indicate that the parent or legal guardian may be able to obtain free or low-cost legal and other relevant services at no expense to the school district, and include the names, addresses and telephone numbers of appropriate agencies and other professional resources where such services may be obtained; and

(v) indicate that during the pendency of any proceedings conducted pursuant to this section, unless the commissioner or local board of education and the parents or legal guardian otherwise agree, the pupil shall not be evaluated and shall remain in the then current educational placement of such pupil or, if applying for initial admission to a public school, shall be placed in the public school program until all such proceedings have been completed.

(3) Notice of meetings. The notice described in paragraphs (1) and (2) of this subdivision, or a subsequent notice, received by the parent at least five days prior to a meeting of the committee on special education, which, is for the purpose described in section 200.4(c), (e)(6), or (f) of this Part, shall inform the parent of the date, time, location and persons expected to attend the meeting. The notice shall invite the parent to participate in the development of recommendations and state that the parent has the right to be accompanied by such individuals as the parent desires at the meeting.

(4) Notice upon recommendation. Upon completion of an evaluation, a reevaluation, or a review of a pupil, a committee on special education shall report its findings to the board of education or trustees in the form of a recommendation regarding the pupil's eligibility and need for special education.

(i) A committee on special education which:

(a) concludes that a child does or does not possess a handicapping condition to a degree sufficient to warrant provision of special education;

(b) recommends a change in or continuation of the classification, educational placement or educational program of a pupil; or

(c) recommends a change in the provision of a free appropriate public education to a pupil;

shall give written notice to the parent of its recommendation to the board of education or trustees.

(ii) Such notice shall:

(a) describe in detail the recommendation to the board of education or trustees;

(b) specify the test or reports upon which the recommendation is based;

(c) state the due process rights described in subparagraphs (ii), (iii), (iv) and (v) of paragraph (2) of this subdivision; and

(d) request parental consent to the provision of the recommended special education programs and services for a pupil entering special education for the first time.

(5) The board of education shall notify the parents of its decision and arrange for placement of the pupil within 30 days of the committee's recommendation.

(b) *Consent.*

(1) Written consent of the parent, defined in Section 200.1(i) of this Part, is required prior to initiating an evaluation or the provision of special education to a pupil who has not previously been identified as having a handicapping condition. In addition, written consent of the parent is required for initial placement in a twelve-month educational program.

(2) In the event the parent of the pupil to be evaluated does not grant consent for an initial evaluation, such parent shall be informed by the committee chairperson that, upon request, the parent will be given an opportunity to attend an informal conference with the committee or designated professionals most familiar with the proposed evaluation, the person who referred the pupil for such an evaluation, and counsel or an advisor of the parent's choice, at which time the parent shall be afforded an opportunity to ask questions regarding the proposed evaluation. If at this meeting the parent and the person initiating the referral agree in writing that the referral is not warranted, the referral shall be withdrawn. If the parent does not request or attend such a conference, or continues to withhold consent for evaluation otherwise required for a period of 30 days after the date of receipt of a referral, the board of education shall initiate an impartial hearing to be conducted in accordance with subdivision (c) of this section for the purpose of determining whether such an evaluation shall be conducted without parental consent.

(3) In the event that a parent does not grant consent for an initial placement within 30 days of a notice of recommendation, the board of education shall initiate an impartial hearing to determine if such placement is warranted without parental consent.

(c) *Impartial hearings*. Upon receipt of a notice in accordance with the provisions of subdivision (a) of this section, or after the receipt of a notice from the board of education or trustees that the recommendation of the committee on special education has been rejected or modified by the board of education or trustees, or in the event that the committee on special education fails to make a recommendation in accordance with the provisions of section 200.4 of this Part, or that the board of education or trustees shall fail to effectuate a recommendation of such committee within 30 days after the receipt of such recommendation, the parent or legal guardian may request, in writing, an impartial formal hearing. When a hearing is requested by either party, the board of education shall arrange for such a hearing to be conducted in accordance with the following rules:

(1) The board of education or trustees shall appoint an impartial hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him.

(2) A written or electronic verbatim record of the proceedings before the hearing officer shall be maintained and made available to the parties.

(3) At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the dominant language of pupil's home, shall be provided at district expense.

(4) The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.

(5) The parties to the proceeding may be represented by legal counsel or individuals with special knowledge or training with respect to the problems of children with handicapping conditions, and may be accompanied by other persons of their choice.

(6) Unless a surrogate parent shall have previously been assigned, the impartial hearing officer shall determine whether the interests of the parent are opposed to or inconsistent with those of the child, or whether for any other reason the interests of the child would best be protected by assignment of a surrogate parent, and, where he so determines, the impartial hearing officer shall designate a surrogate parent to protect the interests of such child.

(7) The hearing shall be closed to the public unless the parent requests an open hearing.

(8) The parents, school authorities, and their respective counsel or representative, shall have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five days before the hearing.

(9) The parents shall have the right to determine whether the child shall attend the hearing.

(10) The impartial hearing officer shall render a decision, and mail a copy of the decision to the parents and to the board of education, not later than 45 calendar days after the receipt by the board of education of a request for a hearing or after the initiation of such a hearing by the board. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the board of education of the right to obtain a review of such a decision by the commissioner in accordance

with subdivision (d) of this section. Within five days from the receipt of a copy of the decision of the hearing officer, the board of education shall mail a copy of such decision, after deleting any personally identifiable information, to the Office for Education of Children with Handicapping Conditions, State Education Department, for the use of the State advisory panel.

(d) *Appeal to the commissioner.* A review of the decision of a hearing officer rendered in accordance with subdivision (c) of this section may be obtained by either the parent or the board of education by an appeal to the commissioner. Such a review shall be initiated and conducted in accordance with the provisions of Part 279 of this Title. The written decision of the commissioner, a copy of which will be mailed to the parent and the board of education, shall be final, provided that either party may seek judicial review by means of a proceeding pursuant to article 78 of the Civil Practice Law and Rules or 20 U.S.C. section 1415.

(e) *Surrogate parents.*

(1) Qualifications. Persons selected as surrogate parents shall not be officers, employees or agents of the local school district or State Education Department or other agency involved in the education or care of the child, and shall, to the extent possible:

(i) have no other interest which could conflict with their primary allegiance to the pupil they would represent;

(ii) be committed to acquaint themselves personally and thoroughly with the pupil and the pupil's educational needs;

(iii) be of the same racial, cultural and linguistic background as the pupil they seek to represent; and

(iv) be generally familiar with the educational options available to children with handicapping conditions.

(2) Procedures for assigning surrogates. Assignment of a surrogate parent to a particular pupil shall be made in accordance with the following procedures:

(i) Any person whose work involves education or treatment of children who knows of a pupil who may need special education services, and who knows that the parents or guardians are not known or are unavailable, or that the pupil is a ward of the State, may file a request, for assignment of a surrogate parent to the pupil, with the committee on special education to which the pupil may be appropriately referred.

(ii) The committee on special education shall send notice of the possible need for a surrogate parent to the adult in charge of the pupil's place of residence and to the parents or guardians at their last known address.

(iii) The committee on special education shall determine whether the parents or guardians are unknown or unavailable, or whether the pupil is a ward of the State. This determination shall be completed within a reasonable time following the receipt of the original request for a surrogate parent. If the committee on special education finds that there is a need for a surrogate parent, such assignment shall be made by the board of education or other body responsible for the provision of special education programs and services to the pupil within 10 days of the date of the determination by the committee.

(iv) Once assigned, the surrogate parent shall represent the pupil at least through the time of the first periodic review of the pupil's educational placement.

(3) Selection. Where the pupil's parents or guardians are unknown or unavailable, or where the pupil is a ward of the State, the board of education or other appropriate body shall select a surrogate parent from a list of individuals who are eligible and willing to serve as surrogate parents.

(f) *Confidentiality of personally identifiable data.*

(1) Personally identifiable data, information or records pertaining to a pupil with a handicapping condition shall not be disclosed by any officer or employee of the State Education Department or any school district, or member of a committee on special education, to any person other than the parent of such pupil, except in accordance with the provisions of part 99 of title 34 of the *Code of Federal Regulations* (*Code of Federal Regulations*, 1984 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1984 – available at the Office for the Education of Children with Handicapping Conditions, Room 1073, Education Building Annex, Albany, NY 12234).

(2) Each private school subject to the provisions of section 200.7 of this Part shall adopt procedures,

comparable to those set forth in part 99 of title 34 of the *Code of Federal Regulations* (*Code of Federal Regulations*, 1984, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1984 – available at the Office for the Education of Children with Handicapping Conditions, Room 1073, Education Building Annex, Albany, NY 12234), to preserve the confidentiality of records pertaining to pupils attending such schools pursuant to State appointment or contract between the department or a school district and the private school.

200.6 Continuum of services.

(a) A pupil with a handicapping condition shall be provided with appropriate special education.

(1) To the maximum extent appropriate, pupils with handicapping conditions shall be provided special education in the least restrictive environment, as defined in section 200.1(t) of this Part.

(2) A pupil with a handicapping condition shall be provided the special education determined by the board of education to be necessary to meet the pupil's special educational needs.

(3) Pupils with handicapping conditions placed together for purposes of special education shall be grouped by similarity of individual needs as defined in section 200.1(hh) of this Part, in accordance with the following:

(i) The range of academic or educational achievement of such pupils shall be limited to assure that instruction provides each pupil appropriate opportunities to achieve his or her annual goals. The learning characteristics of pupils in the group shall be sufficiently similar to assure that this range of academic or educational achievement is at least maintained.

(ii) The social development of each pupil shall be considered prior to placement in any instructional group to assure that the social interaction within the group is beneficial to each pupil, contributes to each pupil's social growth and maturity, and does not consistently interfere with the instruction being provided. The social needs of a pupil shall not be the sole determinant of such placement.

(iii) The levels of physical development of such pupils may vary, provided that each pupil is provided appropriate opportunities to benefit from such instruction. Physical needs shall be considered prior to determining placement to assure access to appropriate programs. The physical needs of the pupil shall not be the sole basis for determining placement.

(iv) The management needs of such pupils may vary, provided that environmental modifications, adaptations, or, human or material resources required to meet the needs of any one pupil in the group are provided and do not consistently detract from the opportunities of other pupils in the group to benefit from instruction.

(b) *Staffing requirements pursuant to Part 80 of this Title.*

(1) When a remedial service is included in the individualized education program (IEP), such service shall be provided by appropriately certified or licensed individuals.

(2) When a transitional support service is included in the individualized education program to be provided to teachers of a pupil with a handicapping condition, such service shall be provided by personnel appropriately certified or otherwise qualified in each area of service.

(3) Related services shall be provided by individuals with appropriate certification or license in each area of related service.

(4) Special education instruction shall be provided by individuals appropriately certified or licensed pursuant to sections 80.6 or 80.2(j) of this Title.

(5) An administrator or supervisor of special education programs serving more than 25 percent of his assignment in such capacity shall hold a certificate valid for administrative and supervisory service pursuant to section 80.4 of this Title.

(c) *Transitional support services* prescribed in the individualized education program (IEP) shall be provided for a teacher upon the recommendation of the committee on special education, and shall be specified in the pupil's individualized education program (IEP). When the provision of transitional support service is under consideration by a committee on special education, the teachers of the pupil for whom the service is being considered shall be given the opportunity to participate in the meeting of the committee for the purpose of advising the committee of the extent to which such services are needed.

(d) *Related services* shall be recommended by the committee on special education to meet specific needs of

a pupil with a handicapping condition as set forth in the individualized education program (IEP).

(1) The frequency and duration of each such service shall be in the individualized education program (IEP), based on the individual pupil's need for the service.

(2) For pupils with handicapping conditions determined to need speech and language services, such services shall be provided a minimum of two periods each week, and the total caseload of such pupils for teachers providing such services shall not exceed 65.

(3) When a related service is provided to a number of pupils at the same time, the number of pupils in the group shall not exceed five pupils per teacher or specialist.

(4) A pupil with a handicapping condition may be provided with more than one such service in accordance with the need of the pupil.

(5) Related services may be provided in conjunction with a regular education program or with other special education programs and services.

(e) *Resource room programs.* Resource room programs shall be for the purpose of supplementing the regular or special classroom instruction of pupils with handicapping conditions who are in need of such supplemental programs.

(1) Each pupil with a handicapping condition requiring a resource room program shall receive not less than three hours of instruction per week in such program.

(2) Pupils shall not spend more than 50 percent of their time during the day in the resource room program.

(3) An instructional group which includes pupils with handicapping conditions in a resource room program shall not exceed five pupils per teacher.

(4) The composition of instructional groups in a resource room program shall be based on the similarity of the individual needs of the pupils according to:

(i) levels of academic or educational achievement and learning characteristics;
(ii) levels of social development;
(iii) levels of physical development; and
(iv) the management needs of the pupils in the classroom.

(5) The total number of pupils with a handicapping condition assigned to a resource room teacher shall not exceed 20.

(6) Upon application and documented educational justification to the commissioner, approval may be granted for a variance from the size of an instructional group and the total number of pupils assigned to a resource room teacher as specified in paragraphs (3) and (5) of this subdivision.

(f) *Special classes.* The following standards shall be used in the provision of special classes for pupils with handicapping conditions:

(1) A pupil with a handicapping condition shall be placed in a special class for instruction on a daily basis to the extent indicated in the pupil's individualized education program.

(2) In all cases the size and composition of a class shall be based on the similarity of the individual needs of the pupils according to:

(i) levels of academic or educational achievement and learning characteristics;

(ii) levels of social development;

(iii) levels of physical development; and

(iv) the management needs of the pupils in the classroom.

(3) A special class shall be composed of pupils with the same handicapping conditions, or of pupils with differing handicapping conditions but with similar individual needs.

(4) Special class size for pupils with handicapping conditions. The maximum class size for those pupils whose special education needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting shall not exceed 12 pupils, except that:

(i) The maximum class size for special classes containing pupils whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such pupils, shall not exceed 12 pupils, with at least one paraprofessional assigned to each class during periods of instruction.

(ii) The maximum class size for special classes containing pupils whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention,

shall not exceed six pupils, with at least one paraprofessional assigned to each class during periods of instruction.

(iii) The maximum class size for those pupils with severe multiple handicaps, whose programs consist primarily of habilitation and treatment, shall not exceed 12 pupils. In addition to the teacher, the staff/pupil ratio shall be one staff person to three pupils. The additional staff may be teachers, paraprofessionals and/or related service providers.

(5) The chronological age range within special classes of pupils with handicapping conditions who are less than 16 years of age shall not exceed 36 months. The chronological age range within special classes of pupils with handicapping conditions who are 16 years of age and older is not limited. However, there shall be no chronological age-range limitations for groups of pupils placed in special classes as described in subparagraph (4)(iii) of this subdivision.

(6) Upon application and documented educational justification to the commissioner, approval may be granted for variance from the special class sizes and chronological age ranges specified in paragraphs (4) and (5) of this subdivision, respectively.

(7) Each district operating a special class wherein the range of achievement levels in reading and mathematics exceeds three years shall, except for special classes described in subparagraphs (4)(ii) and (iii) of this subdivision, provide the committee on special education and the parents and teacher of pupils in such class a description of the range of achievement in reading and mathematics, and the general levels of social development, physical development and management needs in the class, by November 1st of each year. The parent of each pupil entering such a class after November 1st shall also be provided a description of the class. A district providing such a description shall also inform the parent of each pupil in such class that, upon request, the parent shall be afforded the opportunity to discuss the description with an appropriate representative of the district. A copy of such description shall also be included in the district plan required by section 200.2(c) of this Part.

(8) For parents of pupils placed in special classes described in subparagraphs (4) (ii) and (iii) of this subdivision, provision shall be made for parent counseling or education for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.

(g) *Home and hospital instruction.* Pupils with handicapping conditions who are recommended for home and/or hospital instruction by the committee on special education shall receive individualized instruction as follows:

(1) a minimum of five hours per week at the elementary level, preferably one hour daily; or

(2) a minimum of 10 hours per week at the secondary level, preferably two hours daily.

(h) *In-state or out-of-state private schools.*

(1) Eligibility of pupils. For placement in a private school, satisfactory evidence shall be provided that:

(i) the pupil for whom assistance is requested is of school age;

(ii) there is present a handicapping condition or combination of handicapping conditions; and

(iii) an application to the commissioner has been made by the board of education of the school district in which such pupil resides, which shall include adequate medical and/or psychological examinations, establishing the fact that the pupil has a handicapping condition to the extent that appropriate public facilities for instruction are not available.

(2) Application. An application shall be made to the commissioner by the board of education for approval of the placement of a pupil with a handicapping condition in a private educational facility. No placement shall be effected until approval has been received. An annual application for the continuation of an approved placement of a pupil with a handicapping condition in a facility shall be submitted by the board of education to the commissioner prior to June 1st preceding the school year for which such continued placement is sought.

(3) Criteria for approval. No pupil with a handicapping condition shall be placed in a private school unless:

(i) such placement is determined to be the least restrictive environment appropriate to the pupil's educational needs;

(ii) such placement is in a private school approved by the commissioner for the educa-

tion of pupils with handicapping conditions;

(iii) such placement has been approved by the commissioner; and

(iv) the placement shall be for the entire school year or the balance thereof.

(i) *Levels of service.*

(1) The percent of each instructional day during which a pupil is provided any one or combination of the special education programs and services shall be in keeping with the individual needs of the pupil and the standards established in subdivisions (a), (b), (d), (e), (f), (g), and (h) of this section.

(2) Claims for State excess cost aid shall be based upon the minimum levels of service established in subdivision 19 of section 3602 of the Education Law.

(j) *Twelve-month programming.*

(1) Eligibility of pupils for twelve-month educational programs. Pupils may be considered for twelve-month educational programs in accordance with their need to maintain developmental levels, if they are:

(i) pupils whose management needs are determined to be highly intensive and require a high degree of individualized attention and intervention who are placed in classes in accordance with subparagraph (ii) of paragraph (4) of subdivision (f) of this section; or

(ii) pupils with severe multiple handicaps, whose programs consist primarily of habilitation and treatment and are placed in special classes in accordance with subparagraph (iii) of paragraph (4) of subdivision (f) of this section; or

(iii) pupils who are recommended for home and hospital instruction whose special education needs are determined to be highly intensive and require a high degree of individualized attention and intervention or who have severe multiple handicaps and require primarily habilitation and treatment; or

(iv) pupils whose needs are so severe that they can be met only in a seven-day residential program; or

(v) pupils, who are not in programs as described in subparagraphs (i) through (iv) of this paragraph during the period from September through June, whose handicapping conditions are severe enough to exhibit the need for a structured learning environment of twelve months duration to maintain developmental levels as determined by the committee on special education.

(2) All programs as described in paragraph (1) of this subdivision and offered during July and August shall have been approved by the commissioner in the first year in which the program is offered and periodically thereafter.

(3) The commissioner shall establish tuition reimbursement rates for the special education and related service programs approved for July and August.

200.7 Program standards for education programs for pupils with handicapping conditions being educated in private schools and State-operated or Statesupported schools.

(a) *Approval of private schools for pupils with handicapping conditions funded pursuant to article 89 of the Education Law.*

(1) General.

(i) Private schools and special-act school districts for pupils with handicapping conditions, including summer schools, shall be eligible for approval by the commissioner to receive public funds for the education of pupils with handicapping conditions, provided such schools meet the criteria in this Part.

(ii) Facilities of educational programs located outside the continental United States shall not be eligible for approval.

(iii) Reimbursement rates shall be calculated according to New York State statutes and applicable regulations for all approved private schools, including out-of-state schools and for special-act school districts. However, the commissioner may accept reimbursement rates for out-of-state schools calculated by the state in which the school is located, provided those rates have been approved by the state in which the school is located.

(iv) Private schools seeking initial approval to be reimbursed with public funds shall have access to sufficient capital or other financial resources, other than revenues expected from New York State or local school dis-

tricts, to cover all operating, property maintenance, leasing or purchase costs during the year of conditional approval.

(2) Approval of private schools for reimbursement with public funds.

(i) Conditional approval for private schools shall be limited to a period of one school year, or the period of time required to complete approval, and will be based on:

(a) submission of program information forms;

(b) submission of budget or financial statement information, including evidence that the school has enough capital or other financial resources, other than State or local sources of revenue, to be able to operate for at least one year;

(c) a fire safety check by the New York State Division of Fire Prevention and Control for in-state private schools, and a State or local fire safety check for out-of-state schools;

(d) for schools operating as corporate entities, evidence of the following:

*(1)*for in-state not-for-profit schools, a charter or application for a charter from the Board of Regents, incorporating a school authorized to provide special education services;

*(2)*for in-state for-profit schools, approval by the commissioner of the school's incorporation for the provision of special education; or

*(3)*for out-of-state schools, a license or charter from the state education agency of the state in which the school is located; and

(e) at least one on-site program review visit by program or fiscal staff of the Office for Education of Children with Handicapping Conditions.

(ii) Final approval of schools which have had conditional approval:

(a) will be based on at least two site visits by program or fiscal staff of the Office for Education of Children with Handicapping Conditions during the year of conditional approval; and

(b) will take effect as of the date a final approval letter is issued by the commissioner, or his designee.

(3) Denial or termination of private school approval.

(i) Private schools may be denied approval or removed from New York's list of private schools approved for reimbursement with public funds, or such approval may be terminated according to the following procedure:

(a) The commissioner or his designee will notify the school in writing of the reasons why denial or termination of approval is necessary, including a list of program or financial deficiencies and violations of State and Federal law or regulations which the commissioner believes to exist at the schools.

(b) Schools may reply to the commissioner's notification within 30 days, addressing the commissioner's statement of reasons, indicating whether deficiencies or violations exist, what steps may be taken to correct conceded deficiencies or violations, and the time period in which deficiencies or violations will be corrected. If no reply is received, termination will be effective 30 days from the date of receipt of the commissioner's notification.

(c) Requests for a hearing to review a proposed decision to deny or terminate approval may be made to the commissioner's designee. The request shall be made in writing to the commissioner's designee within 10 days of receipt of a notice of removal from the list.

(d) Schools may be removed from the approved list five days after written notice by the commissioner indicating that there is a clear and present danger to the health or safety of children attending the school, and listing the dangerous conditions at the school.

(b) *Operation and administration of private schools and State-operated and State-supported schools.*

(1) Parents of children attending schools governed by this section shall not be asked to make any payments in lieu of, in advance of or in addition to, State, school district or county payments for allowable costs for children placed according to New York State procedures.

(2) The confidentiality of pupil records at schools governed by this Part shall be maintained, and parental access to such records shall be permitted, in a manner comparable to that required of school districts pursuant to the 20 USC 1232g (*United States Code*, 1982 edition, volume 8, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1983 – available at the Office for Education of Children with Handicapping Conditions, Room 1073, Education Building Annex, Albany, NY 12234).

(3) No pupil attending any school governed by this section may be suspended for a period of five days or less for disciplinary reasons unless the pupil and the person in a parental relation to the pupil are, on request, given an opportunity for an informal conference. During this conference, the person in parental relation shall be authorized to ask questions of complaining witnesses. If the suspension is for more than five days, such suspension shall constitute a change in the pupil's educational placement and the parents shall be entitled to notice and review procedures listed in section 200.5 of this Part.

(4) The length of the school day shall be comparable to that required by section 175.5 of this Title. The school day shall include instructional services and related services, as required, but shall not include transportation.

(5) Instruction for not less than 180 days each year shall be provided for each pupil. Approved private schools and State-operated and State-supported schools shall submit calendars of such days in session to the commissioner for approval by July first of the preceding school year. All approved private schools shall comply with the Education Law regarding attendance. Attendance registers shall be available for inspection by appropriate personnel of the contracting school districts, the department, and the school district in which the school is located.

(6) Personnel qualifications and screening procedures. All professional instructional and supervisory personnel at schools governed by this section shall be appropriately certified in accordance with the provisions of Part 80 of this Title and section 200.6 of this Part. All non-instructional personnel at residential schools governed by this section shall be appropriately qualified in accordance with the provisions of section 200.15 of this Part. All persons applying to be employees or volunteers at residential schools governed by this section shall be screened in accordance with the provisions of section 200.15 of this Part.

(7) An approved private school, a State-operated school, or a Statesupported school shall conform to all applicable fire and safety regulations of the State and municipality in which it is located. Each such school shall cause an annual inspection to be made in the manner set forth in subdivision 3 of section 807-a of the Education Law. A report of such inspection shall be made upon forms supplied by the commissioner and shall be maintained on file at the school. For schools subject to provisions of section 807-a of the Education Law, the report prepared pursuant thereto shall be deemed equivalent.

(c) *Additional operational and administrative provisions related solely to private schools.*

(1) Application. An application shall be made to the commissioner by the board of education for approval of the placement of a pupil with a handicapping condition in an approved private educational facility which has been determined to be the least restrictive environment for the pupil. An annual application for the continued placement of a pupil with a handicapping condition in such approved facility shall be submitted by the board of education to the department prior to June first preceding the school year for which such continued placement is sought.

(2) No child with a handicapping condition shall be removed or transferred from an approved in-state school without the approval of the school district contracting for education of such child pursuant to section 4402 of the Education Law. No child with a handicapping condition shall be removed or transferred from an approved out-of-state school without the approval of the commissioner.

(3) Educational programs initially approved for reimbursement after September 1, 1981 shall provide instruction to a minimum of 13 children by September 1, 1982.

(4) A phase II individualized education program (IEP) and an educational progress report on each pupil shall be provided by the approved school to the committee on special education of the referring district or the referring agency at least annually. Other required data and/or reports shall be made available by the private school to the referring district or agency on request.

(d) *Appointment of blind, deaf and severely physically handicapped pupils to certain State-operated and State-supported schools pursuant to articles 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974.*

(1) Application for State appointment of deaf, blind or severely physically handicapped pupils to State-operated or State-aided schools for the blind, deaf or severely physically handicapped shall be initiated by parents through application to the commissioner, supported by adequate written evidence of the blind, deaf or severely handicapping condition. The commissioner will direct the parents to make arrangements at a designated Stateoperated or State-supported school for an evaluation. Such school will evaluate the child's eligibility for its program and notify the parents and commissioner of the results of such evaluation, and recommend appointment if appropriate. In the case of a child not recommended for appointment to a particular State-operated or State-supported school, or in the event of a change in a recommendation concerning the classification, placement or provision of a free appropriate public education to a pupil at a State-operated or State-supported school, the school shall notify the parent. Such notification shall be comparable to that required by section 200.5(a) of this Part, shall include all reasons for lack of acceptance of the child into the program or for the change in the recommendation, and shall include suggestions for more appropriate placement or program. The parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such hearing officer shall not be an employee of the department. The procedures relating to the conduct of the hearing and review of the decision of the hearing officer shall be comparable to those set forth in section 200.5 (c)-(d) of this Part. The approval of the commissioner in granting the State appointment, if appropriate, will be determined upon the following criteria:

(i) Only those profoundly deaf, i.e., with a loss in excess of 80 db ISO in the better ear, or deaf-blind, or severely physically handicapped students between the ages of 3 and 21, or legally blind students, at least kindergarten age or receiving a special instructional program at the preschool level, who are residents of New York State, may receive appointments to the State-operated or State-supported schools and be included for State support for their education.

(ii) Deaf or blind children appointed on a day basis shall be appointed to the school for the deaf or blind nearest their place of residence; provided that, with the consent of the child's parent, a blind child may be appointed to the Lavelle School for the Blind in the city of New York or the New York Institute for Education of the Blind in the city of New York without regard to which such State-supported school is nearer to the child's place of residence. Children may be appointed to a school for the deaf or blind on a residential basis when daily transportation between the child's place of residence and such school is not feasible, or when it is established to the satisfaction of the commissioner that such placement is necessary to meet the individual educational needs of the pupil. Appointments for severely physically handicapped children to attend the Human Resources School shall be on a day basis only.

(2) If the commissioner declines to make a State appointment of a child who has been recommended for appointment by a Stateoperated or State-supported school, or if he seeks to change a child's classification or placement against the recommendation of the State-operated or State-supported school which such child attends, the parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such a hearing officer shall not be an employee of the department. The procedures relating to notice and review of a refusal of State appointment or of a change of classification or placement by the commissioner shall be comparable to those set forth in section 200.5 (a)-(c) of this Part, and shall be provided by the Education Department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article 78 of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

(3) State-appointed pupils shall be eligible for transfer between State-operated and/or State-supported schools upon appropriate evaluation and recommendation of the State-operated and/or Statesupported school which such pupils currently attend, with the approval of the commissioner. State-appointed pupils being consid-

ered for transfer shall remain in the school they currently attend until an alternate school placement is finalized. Such transfers shall be subject to the notice and review procedures set forth in paragraph (1) of this subdivision.

(4) State-operated or State-supported schools may apply to the commissioner for the termination of the appointment of a pupil. An application for this purpose shall set forth the basis for such action and shall be made only after compliance with the notice and review procedures set forth in paragraph (1) of this subdivision. No appointment shall be terminated until the pupil can be transferred to a more appropriate program without interruption of the continuity of such pupil's education program.

(5) The eligibility of deaf infants to receive educational services pursuant to section 4204-a of the Education Law, and the approval of educational facilities to provide such services, shall be determined in accordance with the provisions of this paragraph.

(i) For the purposes of this paragraph:

(a) Deaf infant means a child of less than three years of age who has a severe hearing loss which precludes the learning of spoken language through the sense of hearing alone. Infants who are unable to respond to sounds presented at intensities of 60 decibels (db) sound pressure level (SPL) shall be eligible for special educational assistance in order to develop spoken language. Infants of less than two years of age who are unable to respond at 60 decibels (db) sound pressure level (SPL) may be eligible for such services, provided that they have been recommended by a diagnostic agency.

(b) Approved facilities means the schools for the deaf which are enumerated in section 4201 of the Education Law, and other public and private agencies which have been approved by the commissioner in accordance with the provisions of subparagraph (iii) of this paragraph.

(ii) Eligibility of infant. An annual application for services shall be filed by the parents or legal guardians of deaf infants on forms prescribed by the commissioner. The initial application for each infant shall be accompanied by audiological, otological and other appropriate reports which will be used in determining eligibility for program assistance. If an infant is determined to be eligible, a referral will be made to an approved facility by the commissioner. Continuation in the program shall be dependent upon infant progress reports which shall be submitted quarterly by the facility which each infant attends. If a facility indicates that an infant cannot benefit from the educational program to which such infant has been admitted, the facility shall forward to the commissioner its recommendations for termination of the infant's participation in such program and for any appropriate educational services for such infant.

(iii) Eligibility of facilities. A facility shall be approved to provide educational services to such infants on an annual basis, following an inspection of such facility, provided that the plant, staff and program thereof meet the following standards:

(a) The facility shall provide an educational program, for both infant and parent or legal guardian which shall include language development, auditory stimulation, speech and speech reading. Language development may include any system of oral or manual communication or combination of both. Such program shall also provide orientation to parents regarding the implications of deafness, developmental needs of deaf infants, and the psychosocial problems encountered by parents or legal guardians of deaf infants.

(b) An approved facility shall have a physical plant appropriately equipped to serve infants who are deaf, and shall be subject to a site visitation by the commissioner.

(c) An approved facility shall adhere to all provisions of paragraph (7) of subdivision (b) of this section.

(d) An approved facility shall employ teachers of the deaf or teachers of the speech and hearing-handicapped who are certified or licensed pursuant to sections 80.6 or 80.2(j) of this Title.

(e) A register of approved facilities will be maintained by the department.

200.8 State assistance for instruction of pupils with handicapping conditions pursuant to section 4406 of the Education Law.

(a) *Approval of orders of the Family Court.* An order of the Family Court which directs that special educational services be provided to a pupil with a handicapping condition may be approved by the commissioner, provided that satisfactory evidence is submitted to establish that:

(1) for services provided during the months of July and August through August 1986, such pupil is a child with a handicapping condition, as defined by section 4401 of the Education Law, and is not eligible for educational services pursuant to article 73, 85, 87, 88 or 89 of the Education Law; or

(2) such pupil meets all the criteria of subdivision 1 of section 4401 of the Education Law, except that the pupil is under school age of five and is not entitled to attend public schools without the payment of tuition pursuant to section 3202 of the Education Law and such pupil is also not eligible for educational services pursuant to article 73, 85, 87, 88 or 89 of the Education Law.

(b) No order of the Family Court shall be approved with respect to any pupil who has not previously received State assistance pursuant to the provisions of sections 4406 and 4407 of the Education Law to attend such school, or any pupil who is to be enrolled in a private school which has not been approved by the department in accordance with the provisions of section 200.7 of this Part, unless appropriate notification has been received by the department on or before June 30th in the school year for which special educational services are sought. The provisions of this subdivision shall not apply to a pupil enrolled in a school subject to visitation by the commissioner pursuant to article 85 of the Education Law.

(c) *Submission of claims.* In order to be eligible for State assistance pursuant to Education Law, section 4406:

(1) for services provided prior to July 1, 1983, each voucher for payment by the State, pursuant to the provisions of subdivisions 2 and 3 of section 4406 of the Education Law, shall be submitted to the department by a county or city not later than 12 months from the date on which a certificate of approval for State aid was issued, or 12 months from the last day of the school year within which special educational services were provided, whichever is later; or

(2) for services provided on or after July 1, 1983, payment by the county or city for such services shall be made not later than 12 months from the date on which a certificate of approval for State aid was issued, or 12 months from the last day of the school year within which special educational services were provided, whichever is later, and each voucher for payment by the State, pursuant to the provisions of subdivisions 2 and 3 of section 4406 of the Education Law, shall be submitted by a county or city not later than two months after issuance by the department of the automated voucher listing immediately following the later of the above two dates.

200.9 State reimbursement to private schools and special-act school districts educating children with handicapping conditions who have been enrolled pursuant to article 89 of the Education Law.

(a) Reimbursement to private schools and special-act school districts receiving public funds for educating children with handicapping conditions will be on the basis of principles contained in this section.

(b) Local school district or local government contracts shall conform to the provisions of this section and article 89 of the Education Law; school district or local government reimbursement to private schools pursuant to article 89 shall be at the rate recommended by the commissioner and certified by the State Division of the Budget.

(c) *Accounting requirements for private schools being reimbursed with public funds pursuant to article 89 of the Education Law.*

(1) Schools shall keep accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants for independent profit and nonprofit schools, except as modified by the commissioner.

(2) Schools shall use accrual accounting. Each program approved for reimbursement with public funds pursuant to article 89 shall have its own asset, liability and fund balance accounts, as well as expenditure and revenue accounts. An individual school may operate more than one program, but, where multiple rates are certified, separate revenue and expenditure accounts shall be maintained.

(3) Special-act school districts shall keep accounts in accordance with applicable rules of the State Comptroller, as supplemented by rules specified by the commissioner.

(d) *Audits of private schools and special-act school districts receiving public funds pursuant to article 89 of Education Law.*

(1) All private facilities shall be subject to audit by the State, local government or school district providing funds to that school. Where other State agencies or the agencies of other states are involved in the funding of approved facilities, any audits conducted by such agency shall be made available to the department upon written request to the facility.

(2) Audits of private schools may be conducted by the State as necessary. The audit may include all programs whose cost allocations are affected by programs approved pursuant to article 89.

(3) Schools shall reply to a draft State audit within 30 days of receipt. The draft audit may be considered final if no reply is received within 30 days. The school may submit written objections to the draft audit and/or request an oral hearing.

(4) After an audit becomes final, any monies owed by the school shall be paid as soon as notification of final certified audit rates is received by the school, unless the school and commissioner agree to a longer repayment period. If amounts that are to be repaid are substantial and result from good faith errors or interpretative differences, the commissioner may agree to such longer repayment periods as are reasonable under the circumstances. The commissioner will determine the method of repayment.

(e) *Principles governing reimbursement rates to private schools and special-act school districts receiving public funds pursuant to article 89 of the Education Law.*

(1) The school year shall be from July 1st to the following June 30th.

(2) Tuition rates for approved schools will be based on financial statements submitted in a form prescribed by the commissioner. Tuition rates will take into account approved program, administrative, facility and other changes which have occurred after the year which the financial statement describes.

(3) Approved schools shall submit appropriate written justification for new positions or programs, which differ substantially from the special class programs as described in section 200.6(f) of this Part; schools seeking approval shall submit appropriate written justification for all positions and programs which differ substantially from the special class programs as described in section 200.6(f) of this Part.

(4) Charges to school districts shall be determined on the basis of allowable tuition costs, as determined by the commissioner with the approval of the Director of the Budget.

(5) Annual financial statements for the previous fiscal year shall be submitted to the commissioner and shall include:

(i) a balance sheet which describes assets, liabilities and net worth of all programs, including those funded through article 89;

(ii) an income statement, or statement of profit and/or loss for all programs, including those funded through article 89;

(iii) a statement of changes in financial position for all programs, including those funded through article 89;

(iv) any notes which may be necessary to explain the statements required by subparagraphs (i) through (iii) of this paragraph;

(v) the information required in subparagraphs (i) through (iv) of this paragraph may be in the format which the school normally uses to provide year-end financial reports, provided the information is for a July 1st to June 30th school year;

(vi) in addition, schools shall provide information which will allow analysis of revenues and expenses by function. Information shall be provided in the format specified by the State Education Department, including, but not limited to, a general program description, revenue statement, expenditure statement, enrollment data sheet, staffing data sheet, and independent public accountant's opinion;

(vii) financial statements shall be prepared on an accrual basis and in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants for independent profit and nonprofit schools, except as modified by the commissioner;

(viii) financial statements shall be certified by a public accountant independent of the school's daily operations;

(ix) financial statements shall include separate cost centers for each location if a school operates programs in different locations, but shall provide a consolidated report for all locations;

(x) financial statements shall be submitted as soon as possible following the close of the school year, but no later than October first;

(xi) schools shall retain all pertinent accounting records for a period of nine years; and

(xii) special-act school districts shall submit supplemental financial statement information as determined by the commissioner.

(6) Programs seeking initial approval may have tuition rates calculated on budgets submitted in a form prescribed by the commissioner. Budgets for summer schools seeking initial approval shall be submitted by April 15th prior to the summer for which funding is being sought.

(7) Within 30 days of receipt of written notice of a tentative tuition rate, schools may file objections to such rate on any grounds, in writing, and/or may request an opportunity to make an oral presentation. If additional information is required by the commissioner to act on appeal, schools shall have 60 days from receipt of a written request for the information to submit the information. The commissioner's final rate determination will accept or, upon denial, specifically respond to each objection raised by the school. Annually in September following the July in which reimbursement rates have been certified by the Division of the Budget, schools may request a modification of rates if there have been changes in the number of children enrolled or staff employed of greater than 10 percent, provided that such changes have been approved by the commissioner's designated program representatives. Modification may be requested, based on emergencies, such as destruction of property by fire, or on mandates of the commissioner's program representatives, at any time. All rates shall be subject to upward or downward adjustment based on allowable, actual and necessary expenditures in a final audit.

(8) Reimbursement to schools for the costs of buildings or facilities.

(i) For-profit schools which own their facilities.

(a) Reimbursement rates will include all reasonable and necessary occupancy costs, including depreciation charges and interest on capital indebtedness, and operating costs, all as determined by the commissioner. Occupancy costs may be allowed up to a ceiling which is equal to the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development.

(b) In addition, such schools may claim an additional profit or surplus equivalent to 10 percent of equity allocable to article 89 programs, up to a maximum of $200 per child per year. Such amount shall be included in the school's tuition rate.

(ii) For-profit schools which rent their facilities in arm's-length transactions.

(a) An arm's-length transaction means one entered into by independent and unrelated persons, in a competitive transaction, between a willing buyer and a willing seller.

(b) Reimbursement rates will include rental charges for real property up to a ceiling which is the average rent per square foot of commercial office space and apartment space as recorded by the New York State Office of General Services and the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above such ceiling only if the school submits suitable evidence, such as independent appraisals of fair rental value, that no other suitable facility was available and that a move to another facility would severely disrupt the education of children at the school. Reimbursement rates for schools rented in arm's-length transactions will also include operating costs as allowed by the commissioner.

(c) In addition, these schools may claim a profit equal to 10 percent of equity allocable to article 89 programs, up to a maximum of $200 per child per year. Such amount shall be included in the school's tuition rate.

(iii) For-profit schools which rent their facilities in less-thanarm's-length or conflict of interest transactions.

(a) For purposes of this Part, a *conflict of interest* or *less-than-arm's-length transaction* means one between the school and anyone who serves as part of the management or as a volunteer or employee of the facility, or any of the following relations of such persons: spouse, former spouse, child or descendent, parent or ancestor, sibling, or spouse of descendent, ancestor or sibling. Also included are dealings with partnerships of which such persons are partners or employees, or with corporations of which any such person is an officer, director or trustee, or in which any such person owns more than 10 percent of the stock.

(b) Reimbursement rates will include all reasonable and necessary occupancy costs, including depreciation charges and interest on capital indebtedness. Actual occupancy costs of the owner of the property shall be reported to the commissioner or his designated representatives. Reimbursement for actual occupancy costs which are included in rent charges in less-than-arm's-length or conflict of interest situations may be allowed up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above this ceiling upon demonstration of severe need.

(c) In addition, a profit or surplus, within the total figure changed for rent, equivalent to 10 percent of school's equity allocable to article 89 programs, up to a maximum of $200 per child per year, may be claimed. Such amount shall be included in the school's tuition rate.

(d) Reimbursement rates will also include operating costs as allowed by the commissioner.

(iv) Not-for-profit schools which own their facilities. Reimbursement rates will include all reasonable and necessary occupancy costs, including depreciation charges and interest on capital indebtedness, and operating costs, all as determined by the commissioner. Occupancy costs may be allowed up to a ceiling which is equal to the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development.

(v) Not-for-profit schools renting their facilities in arm'slength transactions.

(a) An *arm's-length transaction* means one entered into by independent and unrelated persons, in a competitive transaction, between a willing buyer and seller.

(b) Reimbursement rates will include rental charges for real occupancy up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner may consider requests for necessary rent above this ceiling only if the school submits evidence that no other suitable facility was available or that a move to another facility would severely disrupt the education of the children at the school. Reimbursement rates will include operating costs as allowed by this Part, the commissioner's contract or appendix to contract.

(vi) Not-for-profit schools renting their facilities in less-thanarm's-length or conflict of interest transactions.

(a) For purposes of this Part, a *conflict of interest* or *less-than-arm's-length transaction* means one between the school and anyone who serves as part of the management or as a volunteer or employee of the facility or any of the following relations of such persons: spouse, former spouse, child or descendent, parent or ancestor, sibling, or spouse of descendent, ancestor or sibling. Also included are dealings with partnerships of which such persons are partners or employees, or with corporations of which any such person is an officer, director or trustee, or in which any such person owns more than 10 percent of the stock.

(b) Reimbursement rates will include all reasonable and necessary occupancy costs, including depreciation charges and interest on capital indebtedness. Actual occupancy costs of the owner of the property shall be reported to the commissioner or his designated representatives. Reimbursement for actual occupancy costs which are included in rent charges in less-than-arm's-length or conflict of interest situations may be allowed up to a ceiling which is the average rent per square foot of commercial office space as recorded by the New York State Office of General Services and apartment space as recorded by the Federal Department of Housing and Urban Development. The commissioner will consider requests for necessary rent above this ceiling only if the school can demonstrate severe need.

(c) Reimbursement rates will include operating costs as determined by the commissioner.

(9) Reimbursement of depreciation and interest costs on facilities, buildings or property.

(i) Annual depreciation expense will be allowed on buildings, furniture and fixtures and equipment as determined by the commissioner.

(ii) Depreciation on facility acquisition, construction or renovation will be calculated in accordance with the following provisions:

(a) Such depreciation shall be based on historical cost as recorded in the facility's accounting records.

(b) Such depreciation shall be calculated on the straight-line method over 40 years, unless the school demonstrates to the commissioner or his designated representative that the useful life of the facility is less than 40 years. In no case shall facility acquisition or construction be depreciated over less than 33⅓ years.

(c) Fiscal year expenditures for renovations or alterations, up to a maximum of $10,000, will be considered minor capital expenditures for which prior approval is not required.

(d) Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits and similar improvements not already included in the cost of buildings) may be allowable, provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to programs funded pursuant to article 89 of the Education Law is developed from the amount thus amortized for the base period involved. Amortization methods once used shall not be changed for given buildings or equipment.

(e) Where the depreciation method is applied to assets acquired in prior years, the annual charges therefrom shall not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(f) Where a school elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, pursuant to clause (e) of this subparagraph, are determined by the commissioner or his designated representative(s) to have been fully depreciated.

(g) If a school acquires depreciable property by gift or bequest, depreciation will be allowed based on the market value at the time the gift was donated.

(h) New construction or renovation, or acquisition of a new facility shall be approved in writing by the commissioner's designated program and fiscal representatives or the representatives of another State agency providing reimbursement to the school. If no response is made within 60 days of receipt of a request for approval by the commissioner, such request for approval shall be deemed to have been granted.

(iii) Depreciation on furniture, fixtures and equipment:

(a) shall be based on historical cost, as recorded in the facility's accounting records;

(b) shall be calculated on a straight-line method;

(c) shall be for useful life periods as determined by the commissioner;

(d) shall be allowed for those items costing over $500 and whose use life is more than one year. However, if the value of minor items of this category total more than $2,500, they shall be subject to depreciation and not expensed during the year of acquisition;

(e) shall be allowed, based on market value at the time a gift was donated if a school acquires depreciable furniture, fixtures or equipment by gift or bequest; and

(f) shall be based on adequate property records on furniture, fixtures and equipment. A periodic inventory shall be taken to insure that properties for which depreciation is charged do exist and are needed.

(iv) Interest expense.

(a) Schools may be compensated for necessary interest on capital indebtedness approved by the commissioner's designated fiscal representative(s) if such interest is not in excess of what a prudent borrower, as determined by the commissioner, would pay in the money market at the time the loan was made.

(b) If the loan is from a lender related by control, ownership, affiliation or personal relationship to the borrower, the commissioner may set a level of reimbursement for approved interest on capital indebtedness which is lower than the rate which a prudent borrower would pay in the money market at the time the loan was made.

(10) Operating costs.

(i) Amounts reimbursed for personal services in the tuition rate calculation process will include salaries, wages, fringe benefits and pension plan costs.

(ii) Amounts reimbursed for personal services in the tuition rate calculation process shall be based on school payrolls which have been prepared according to generally accepted accounting principles as determined by the American Institute of Certified Public Accountants for Independent Profit and Nonprofit Schools. Payrolls shall be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one program or cost center must be supported by time distribution records.

(iii) Charges for staff work for programs other than those approved by the commissioner shall not be allowable.

(iv) Charges for part-time employees shall be proportionate to the total compensation that would be paid if the person worked full-time.

(v) Nonpersonal services expenses will be reimbursed in the tuition rate calculation process as determined by the commissioner.

(11) Reimbursement of working capital interest.

(i) Subject to the conditions set forth in subparagraph (ii) of this paragraph, interest on working capital may be allowed in the computation of a tuition rate if:

(a) a school has submitted required financial statement information by the deadline and in the format required by the commissioner, and a rate is not approved by the director of the budget by the deadlines specified in section 4405 of the Education Law;

(b) the commissioner's designated program representative has mandated staff or program changes during the school year which must take effect immediately. Working capital interest will be allowed in the interim before a new rate is certified provided the school submits a request for a rate change within 15 days of receipt of a written program review report; or

(c) governmental payments were at least 30 days after the date for payment specified in contract or written payment schedule which the school has with the State, local government, or school district.

(ii) Allowance for interest on working capital shall be subject to the following conditions:

(a) Schools shall have a written contract or schedule of payment with the State, local government or school district.

(b) Children at the school shall have been placed with the committee on special education and the commissioner, and

shall not have been enrolled before the effective date of such approval.

(c) Billings to such agencies shall have been timely, and at least one follow-up notice sent to delinquent payers.

(d) Schools may borrow up to the percentage limit of the school's annual allowable operating costs determined by the commissioner; interest charges on such working capital borrowing will be allowed in the computation of the tuition rate.

(e) Working capital interest on borrowing between persons in a conflict of interest relationship as defined in clause (a) of subparagraph (iii) of paragraph (9) of this subdivision shall not be allowable.

(f) The loan shall be repaid as soon as possible after receipt of tuition revenue.

(g) Working capital interest shall not be allowed on loans taken while a rate appeal is in process.

(f) *State aid for maintenance payments to private schools.*

(1) Prior to contracting with an approved private residential school for the instruction of a pupil with a handicapping condition in accordance with the provisions of section 4402 of the Education Law, a board of education shall notify the department of the name and the county of residence at the time of the commencement of the school year for which tuition is to be paid for such pupil, the name and address of such private residential school recommended, and the dates upon which such school will commence and terminate residential care of the pupil, and shall submit evidence that there is no appropriate nonresidential school available.

(2) Upon approval of the proposed placement, the department shall notify the appropriate social services district of the placement of a pupil in a private residential school and of its obligation to pay for the maintenance of such pupil at the approved rate established by the Department of Social Services pursuant to the provisions of section 4405 of the Education Law and section 153 of the Social Services Law.

200.10 Reimbursement to certain State-operated and State-supported schools for blind, deaf and severely handicapped children pursuant to articles 85, 87, and 88 of the Education Law and chapter 1060 of the Laws of 1974 and to facilities approved pursuant to section 4204-a of the Education Law.

Aidable operating expenses mean the necessary expenditures for approved educational programs provided to State-supported pupils, and shall be determined in accordance with the following provisions:

(a) State-operated and State-supported schools and facilities approved to provide educational services to deaf infants under Education Law section 4204-a shall submit annually, at times designated by the commissioner, budget forms containing justification for all proposed expenditures for which State aid is required. Such budgets shall indicate by line item all positions and items of proposed expenditure. All budgets in connection with other than department-funded programs shall be reported on a supplemental sheet similar to the format for State-aided programs.

(b) All annual expenditures shall be justified to the satisfaction of the commissioner in accordance with the instructions accompanying the annual year-end report forms submitted by the State-operated and Statesupported schools.

(c) All new positions requested in the annual budget shall be justified in a narrative statement attached to the budget request.

(d) Review of all budgets submitted by the State-supported schools will be guided by the expenditures at the State-operated schools for the deaf and blind. The portion of the salary of each employee which exceeds the salary of an employee having similar duties at the State-operated schools for the deaf and blind shall not be an aidable operating expense of such State-supported private schools, except that a location pay differential, in the amount provided for in any contract or contracts between the State of New York and the certified or recognized employee organization or organizations representing State employees at the State-operated schools for the deaf and blind, will be included as an aidable operating expense of schools located in the geographical areas to which such location pay differential applies.

(e) Budgets approved by the commissioner for a particular school year represent the maximum support for that year. State-supported schools shall limit items of expenditure and positions to those approved by the commissioner. Any transfer between line items of expenditure exceeding 10 percent or $1,000, whichever is greater, of the approved budget authorization for the school year shall have prior approval of the commissioner.

(f) Capital construction for new buildings, including related service facilities, such as heating, sanitary, and lighting facilities, and improvement of grounds, and additions to accommodate growth of activity not a part of the State program, will not be approved as State-aidable operating expenses. Such equipment or furnishings as are necessary to accommodate or maintain the educational program for State-appointed pupils are aidable expenditures, with the prior approval of the commissioner. All necessary repairs, including replacement of roofs, boilers, plumbing systems, installations of safety devices in existing buildings, such as proper exits, fire safety systems and renovation, considered necessary for maintaining generally accepted standards of instruction, living arrangements outside of the classrooms, protection of the health and safety of State-appointed students and the preservation of the physical plant, may be approved, provided that application to the commissioner is made in advance of the incurring of any obligation. Emergency repairs not exceeding $2,500 may be made without prior approval, but the nature and extent of such repairs shall be promptly reported to the commissioner.

(g) Research activities, programs for nonstate-appointed pupils and all other activities with accompanying income and expenditures determined not to be a part of the educational program offered to State-appointed pupils will not be considered in determining State support.

(h) The governing board, by resolution adopted during the fiscal year it received a gift or bequest, may restrict such funds for capital use or other programs which are not State-supported. The board may, by similar resolution, restrict such funds to provide merit supplements to the salaries of staff approved by the commissioner for State-appointed students. Such supplements shall be excluded from any overhead charges. Copies of the resolutions restricting the use of funds from private sources, and annual income derived from such funds, and a designation of funds from private sources that have been restricted by the donor, shall be filed with the commissioner as part of the report of expenditures submitted for final payment.

(i) The submission of the claim for final payment shall be accompanied by a report of income and expenditures. Income shall include all funds from governmental agencies and private sources, including income derived from capital assets. Expenditures shall include the cost of services and programs for State-appointed pupils as well as the cost of other services and programs administered by the school.

(j) State-operated and State-supported schools shall maintain adequate accounting records clearly setting forth the expenses allocable to approved programs and to those additional programs which are not subject to reimbursement.

(k) The accounting records of State-operated and State-supported schools shall be subject to audit and review at times designated by the commissioner and the Department of Audit and Control.

(l) All payments made to the State-operated and State-supported schools and to approved facilities will be in accordance with actual expenditures incurred during the school year for which State payment is sought. Final expenditures are subject to audit by the Department of Audit and Control.

(m) All facilities educating deaf infants pursuant to Education Law section 4204-a shall, in addition, submit quarterly reports of each deaf infant's attendance in accordance with Education Law section 4204a (2) and semiannual reports of each deaf infant's progress.

(n) All facilities educating deaf infants pursuant to Education Law section 4204-a which are eligible to receive financial assistance through the Department of Health for Medicaid patients or for infants approved under the medical rehabilitation program shall seek such assistance for each infant. Infants who are eligible for reimbursement under private insurance or other public health agencies shall not be eligible for tuition assistance. Where educational programming for the deaf infant includes parent orientation sessions which are not eligible for support by the Department of Health or other State or local agencies, the facility may claim that support from the Education Department providing that the facility is approved pursuant to section 200.7(c)(5)(iii) of this Part.

200.11 Admission to public schools of children residing in facilities of OMH and OMRDD or child care institutions.

(a) Children residing in hospitals of the Office of Mental Health (OMH) and schools of the Office of Mental Retardation and Developmental Disabilities (OMRDD) shall be identified, evaluated and provided with special education and related services in accordance with the provisions of section 116.6 of this Chapter.

(1) The committee appointed in each facility pursuant to subdivision (a) of section 116.6 shall recommend to the school district in which the facility is located that those children determined by the facility committee to be able to benefit from instruction in a public school program be admitted to the schools of such district.

(2) The school district committee on special education shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each child so recommended, or whether an appropriate program can be provided by a board of cooperative educational services or another school district by agreement with the school district in which the facility is located.

(i) If the committee on special education determines that the school district has an appropriate program for such a child, or can provide an appropriate program by agreement with a board of cooperative educational services or with another school district, such committee shall recommend to the board of education that the child be admitted to such program.

(ii) In the event that the committee on special education determines that there is no program appropriate to the needs of such a child in the schools of the district, or at a board of cooperative educational services or another school district, such committee shall report its findings to the board of education.

(iii) If the committee on special education concludes that placement in a private school for students with handicapping conditions is the appropriate educational placement for the child, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities place such a child in a private, nonresidential school for children with handicapping conditions.

(b) Children residing in child care institutions shall be identified, evaluated and provided with suitable special education services in accordance with section 4005 of the Education Law.

(1) The committee on special education of a child care institution having its own school shall recommend to the school district in which the facility is located, that those children determined by the facility committee to be able to benefit from instruction in a public school program be admitted to the schools of such district.

(2) The school district committee on special education shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each child so recommended.

(i) If the committee on special education determines that the school district has an appropriate program for such a child, such committee shall recommend to the board of education that the child be admitted to such program.

(ii) In the event that the committee on special education determines that there is no program appropriate to the needs of such a child in the schools of the district, such committee shall report its findings to the board of education.

(c) If a board of education determines that there is no program appropriate to the needs of a child in the schools of the district, or at a board of cooperative educational services or another school district, the board of education shall give notice of such determination to the parent, if the identity of the parent is available to the board, and to the chief administrator of the facility or child care institution in which the child resides. Such notice shall also inform the recipients that either the parent or the chief administrator of the facility may obtain review of the determination made by the board of education by a hearing officer appointed by the chief administrator of the facility or child care institution in accordance with the provisions of section 200.5 of this Part. For purposes of this subdivision, the duties of the school district committee on special education and board of education or trustees set forth in section 200.5 of this Part shall be the duties of the committee on special education and chief administrator of each facility or child care institution, respectively.

(1) A parent who desires such a hearing shall so inform the chief administrator of the facility or the child care institution in writing. Written notice of the hearing shall be given by the chief administrator of the facility or the child care institution

to the parent and to the board of education whose decision is sought to be reviewed. Such board of education shall be a necessary party to the hearing and shall bear the burden of proof with respect to the unavailability of an appropriate program for the child in the school district or at a BOCES or at another school district.

(2) Any party to the hearing may obtain review by the commissioner of the determination of the hearing officer in accordance with the procedures set forth in Part 279 of this Chapter, except that the responsibilities of and the provisions for service on the board of education set forth in sections 279.2 and 279.7 of this Chapter shall apply to the chief administrator of the facility or child care institution.

200.12 State assistance for transportation of pupils with handicapping conditions pursuant to Education Law section 4405. An expenditure by a school district to provide suitable transportation during the period from September through June for a pupil with a handicapping condition to and from a private residential school located within or outside of the State, or to and from residential programs in schools enumerated in article 85, 87, 88 or 89 of the Education Law, shall be aidable provided that:

(a) the pupil was placed in such school in accordance with the provisions of article 85, 87, 88 or 89 of the Education Law; and the expenditure is for transportation of the pupil from the pupil's home to the school at the commencement of the school year, from the school to the pupil's home at the conclusion of the school year, and no more than three additional trips to and from school during the school year, except as additional trips may need to be provided for the periods during which residential care is not provided to the pupils attending such school; and

(b) expenditures for the costs of travel, lodging and meals incurred by a volunteer escort shall also be aidable if the escort is required by the pupil's individualized education program and the escort is engaged pursuant to a transportation contract between the volunteer escort and the school district, subject to a test of reasonable cost by the commissioner.

200.13 Educational programs for autistic pupils.

(a) The functioning levels of autistic pupils, based upon the criteria set forth in section 200.6(f)(2) of this Part, shall govern their individual or small group instruction.

(1) The continuum of special education programs and services as described in section 200.6 of this Part shall be available to autistic pupils as needed.

(2) The chronological age range of instructional groups serving autistic pupils shall not exceed 36 months for pupils under age 16 and shall not be limited for pupils 16 years of age or older.

(3) The class size for such pupils shall be determined in accordance with subdivisions (e) and (f) of section 200.6 of this Part, provided that the class size of special classrooms composed entirely of autistic pupils shall be in accordance with section 200.6(f)(4)(ii) of this Part.

(4) Instructional services shall be provided to meet the individual language needs of an autistic pupil for a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six.

(5) To the maximum extent appropriate, instructional provisions shall be instituted for eventual inclusion of autistic pupils into resource room programs for pupils with combined handicapping conditions or placement in a regular classroom.

(6) In those instances where a pupil has been placed in programs containing pupils with other handicapping conditions, or in a regular class placement, a special education teacher with a background in teaching autistic pupils shall provide transitional support services in order to assure that the pupil's special education needs are being met.

(b) The length of the school day for autistic pupils shall be that set forth in section 175.5 of this Chapter.

(c) All school districts are required to furnish appropriate educational programs for autistic pupils from the date they become eligible for a free appropriate public education until they obtain a high school diploma, or until the end of the school year in which they attain their 21st birthday, whichever occurs first.

(d) Provision shall be made for parent counseling and education for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.

(e) Upon application and justification to the commissioner, approval may be granted for variance from special class sizes and the chronological age ranges specified in subdivision (a) of this section.

200.14 Day treatment programs certified by the Office of Mental Health. Educational programs and services to

pupils with handicapping conditions enrolled in day treatment programs shall be provided in accordance with this section, and those other applicable provisions of this Part that are not inconsistent with this section.

(a) Definitions. As used in this section:

(1) *Day treatment programs* means nonresidential programs, certified by the Office of Mental Health, designed for the purpose of providing a comprehensive array of services for mentally ill pupils with handicapping conditions through integrated mental health and special education programs.

(2) *Treatment planning* means the process of determining the pupil's need for mental health services and developing a specific treatment plan which includes provision of educational services.

(3) *Treatment team* means a team composed of professional and paraprofessional clinical staff members of the day treatment program, including the child's special education teacher.

(b) *Eligibility of pupils with handicapping conditions.*

(1) A pupil with a handicapping condition who has been admitted to a day treatment program in accordance with such program's admission criteria is eligible for placement in the educational component of such day treatment program, if such placement is appropriate to such pupil's special educational needs.

(2) The determination of the existence of a handicapping condition and the recommendation of appropriate special education programs and services shall be the responsibility of the committee on special education of the school district of the pupil's residence. Such determinations and recommendations for children admitted to a day treatment program shall be based on consultation with the program's treatment team.

(c) *Individual evaluation.* In addition to conducting an individual evaluation pursuant to the requirements of section 200.4(b) of this Part, the committee on special education shall assure that appropriate staff participate in the treatment planning conducted by the treatment team. The evaluation shall include an assessment by the day treatment program's special education teacher and other appropriate professional staff of the day treatment program.

(d) *Recommendation.* Individualized education program (IEP) – phase I.

(1) The results of the individual evaluation described in subparagraph (c) of this section, as well as the suggestions of the treatment team, including the type, frequency and duration of services needed to meet the pupil's mental health and educational needs, shall be used in the development of phase I of the IEP.

(2) Phase I of the IEP shall be developed, pursuant to section 200.4 of this Part, in meetings of the committee on special education. A representative of the treatment team shall be given the opportunity to attend. In the event that such representative is unable to attend such meetings, the committee shall attempt alternative means of assuring the representative's participation, such as individual or conference telephone discussions, and such attempts shall be documented.

(e) *Planning conference.* Individualized education program (IEP) – phase II. Planning conferences to develop phase II of the IEP shall be conducted by the special education teacher and professional staff of the day treatment program pursuant to section 200.4(e) of this Part. A copy of the completed phase II IEP shall be forwarded to the committee on special education of the referring district within 30 school days of the pupil's admission to the program.

(f) *Pupil progress reports.*

(1) Each pupil's individualized education program (IEP) shall be reexamined by the pupil's special education teacher and professional staff of the day treatment program at least once every three months for a period of one year after the pupil's enrollment and at least twice a year thereafter. Progress reports based on these reexaminations shall be forwarded to the committee on special education within thirty days of such review.

(2) Referral to the committee on special education for review of the IEP shall be conducted pursuant to section 200.4(e)(6) of this Part and subparagraph (d) of this section.

(3) An annual review and triennial evaluation of each pupil's IEP shall be conducted pursuant to section 200.4(f) of this Part and subparagraph (d) of this section.

(g) *Grouping for instruction.* Pupils with handicapping conditions enrolled in day treatment programs may be grouped for instruction based on similarity of individual mental health needs, when such needs prevent the child from benefitting from instructional groupings pursuant to section 200.6(f) of this Part, as

determined by the professional staff of the day treatment program.

200.15 Procedures for prevention of abuse, maltreatment or neglect of children in residential placements.

(a) *Applicability*. This section shall apply to approved private residential schools, State-operated or State-supported schools which have a residential component and special act school districts as such term is defined in section 4001(8) of the Education Law.

(b) *Personnel screening procedures*.

(1) Schools subject to the requirements of sections 4212, 4314, 4358 and 4403(11) of the Education Law and this section shall establish, subject to and consistent with provisions of the Civil Service Law, written procedures to review, evaluate and verify the backgrounds of, and information supplied by, all applicants for employment or voluntary work. Such procedures shall be subject to the review and approval of the commissioner, and shall include, but need not be limited to, the gathering of:

(i) a statement or summary of the applicant's employment history, including, but not limited to, any relevant child-caring experience;

(ii) the names, addresses and telephone numbers of references who can verify the applicant's employment history, work record and qualifications;

(iii) a statement or summary of the applicant's educational experience showing elementary school(s), secondary school(s), or college(s) attended, highest grade level or degree attained, any additional credits earned, and certifications and/or licenses awarded;

(iv) the names and addresses of elementary and secondary schools and other educational institutions that can verify the applicant's educational information;

(v) a listing of special skills or completed training courses which might aid in the performance of duties of the position for which he or she is applying;

(vi) the names, addresses and telephone numbers of at least two personal references, other than relatives, who can attest to the applicant's character, reputation and personal qualifications; and

(vii) a sworn statement by the applicant, indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this State or any other jurisdiction and that all statements in the application are true, to the best of his or her knowledge.

(c) *Personnel qualifications*.

(1) All professional instructional and supervisory personnel employed at schools governed by this section shall be appropriately certified in accordance with the provisions of Part 80 of this Title and sections 200.6 and 200.7 of this Part.

(2) Pursuant to sections 4314 and 4358 of the Education Law, all noninstructional personnel at State-operated schools for the blind and deaf shall meet the applicable experiential and educational qualifications established for their positions by the Department of Civil Service or, as appropriate, by the Division of Personnel of the State Education Department.

(3) Pursuant to section 4212 of the Education Law, State-supported schools for the blind and deaf shall establish, consistent with existing collective bargaining agreements, minimum experiential and educational qualifications for noninstructional personnel which are satisfactory to the commissioner. Such qualifications shall be consistent with applicable provisions of the Civil Service Law, and shall be submitted for review and approval within a time frame established by the commissioner.

(4) Pursuant to section 4403 of the Education Law, approved private residential schools and special act school districts shall establish, consistent with existing collective bargaining agreements, minimum experiential and educational qualifications for noninstructional personnel which are satisfactory to the commissioner. Such qualifications shall be submitted for review and approval within a time frame established by the commissioner, provided that an exemption from this requirement may be granted, in whole or in part, upon submission of satisfactory proof that such qualifications have been approved by a State agency which licenses or certifies the residential component of the school or the child care institution affiliated therewith.

(d) *Staff supervision*. Schools governed by this section shall develop written procedures for the supervision of employees and volunteers who have the potential for contact with children in residential care. Such

procedures shall be submitted for review and approval within a time frame established by the commissioner. To be approved, such procedures shall be designed to prevent child abuse and maltreatment by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the pupil population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(1) Staffing patterns and the rationale for such;

(2) Responsibilities of supervisors;

(3) The method by which staff and volunteers will be made aware of the identity of all supervisors, including designated on-site supervisors;

(4) Provision of written supervisory guidelines to employees and volunteers;

(5) Periodic observations by supervisors of employees and volunteers in interaction with children;

(6) Periodic supervisory conferences for employees and volunteers; and

(7) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the Civil Service Law and existing collective bargaining agreements.

(e) *Procedures for the protection of children.* All residential schools subject to this section shall develop written procedures for the protection of children when there is reason to believe an incident has occurred which would render a child an abused or maltreated child within the meaning of section 412 of the Social Services Law. Such procedures shall be submitted for review and approval within a time frame established by the commissioner and shall include, but need not be limited to, the following:

(1) Notification. Immediate notification of suspected incidents of abuse or maltreatment shall be made to:

(i) the State Central Register of Child Abuse and Maltreatment, unless, pursuant to section 415 of the Social Services Law, the appropriate local plan for the provision of child protective services provides that reports should be made to the child protective service;

(ii) the appropriate local law enforcement agency if the incident is of a criminal nature; and

(iii) the parent(s) of the child, if the incident involves physical injury to the child.

(2) Investigation. Immediately upon notification that a report of child abuse or maltreatment has been made to the State Central Register of Child Abuse and Maltreatment, or, when applicable, to the child protective service of the local department of social services, the chief administrator of the facility or his or her designee shall:

(i) initiate internal investigation procedures;

(ii) preserve any potential evidence through such actions as securing of the area wherein suspected abuse or maltreatment occurred;

(iii) obtain proper medical evaluation and/or treatment, as needed, with documentation of any evidence of abuse or maltreatment; and

(iv) provide necessary assistance to the State Department of Social Services in its investigation thereof.

(3) Safety. Upon notification that a report of child abuse or maltreatment has been made to the State Central Register of Child Abuse and Maltreatment or, when applicable, to the child protective service of the local department of social services, the chief administrator of the facility or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the children in the program, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the child(ren) involved in the report and of any other child(ren) similarly situated in the facility or program and take such additional action as is necessary to prevent future acts of abuse or maltreatment. Such action may include:

(i) consistent with appropriate collective bargaining agreements and applicable provisions of Civil Service Law:

(a) removal or transfer of the alleged perpetrator;

(b) increasing the degree of supervision of the alleged perpetrator; and/or

(c) initiation of appropriate disciplinary action against the alleged perpetrator.

(ii) provision of increased training and/or increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and maltreatment;

(iii) temporary removal of the child(ren) from a program and reassignment of the child(ren) within the facility, as an emergency measure, if it is determined that there is a risk to the health or safety of such child(ren) in remaining in that program. Whenever a child is removed, pursuant to this subparagraph, from a special education program or service specified in his or her individualized education program (IEP), such action shall be immediately reported to the commissioner or his designee and referred to the appropriate committee on special education for review; and/or

(iv) provision of counseling to the child(ren) involved in the report and any other children, as appropriate.

(4) Corrective action plans. Upon receipt of an indicated report of child abuse or maltreatment, as such term is defined in section 412 of the Social Services Law, the chief administrator of the facility, after consideration of any recommendations of the Department of Social Services for preventive and remedial action, including legal action, shall:

(i) within ten calendar days of receipt of an indicated report of child abuse or maltreatment, develop, implement and submit to the appropriate designee of the commissioner for approval, a written plan of action to be taken with respect to an individual employee or volunteer to assure the continued health and safety of children and to provide for the prevention of future acts of abuse or maltreatment, which plan shall include, at a minimum, those actions taken pursuant to paragraph (3) of this subdivision; and

(ii) in the event an investigation of a report of alleged child abuse or maltreatment determines that some credible evidence of abuse or maltreatment exists and such abuse or maltreatment may be attributed in whole or in part to noncompliance by the facility with provisions of title 6 of article 6 of the Social Services Law, or sections 4212, 4314, 4358 or 4403(11)-(13) of the Education Law or the Regulations of the Commissioner of Education, develop and implement a plan of prevention and remediation, which shall address, at minimum, those areas in which the facility has been found to be out of compliance, shall indicate the manner in which the facility will come into compliance, and shall include the date by which such plan shall be in effect. Such plan shall be developed and submitted for approval to the appropriate designee of the commissioner within 30 calendar days of receipt of such a report.

(f) *Staff training*. To the extent required by the provisions of sections 4212, 4314, 4358 and 4403 (11) of the Education Law, schools shall provide, or ensure the provision of, child abuse prevention training to all administrators, employees and volunteers on a regular, but at least annual, basis. Priority shall be given to the training of administrators, employees and volunteers who have the potential for regular and substantial contact with pupils in residential care. A written description of such training plan shall be submitted for review and approval within a time frame established by the commissioner.

(1) The purpose of such training shall be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill development in areas including, but not limited to, the following:

(i) child abuse prevention and identification;
(ii) safety and security procedures;
(iii) principles of child development;
(iv) characteristics of children in care;
(v) techniques of group and child management, including crisis intervention and appropriate restraint training;
(vi) laws, regulations and procedures, including appropriate reporting responsibilities, governing the protection of children from abuse and maltreatment; and
(vii) any relevant information provided by the department.

(2) The department may exempt administrators from such training requirements upon demonstration of substantially equivalent knowledge or experience.

(g) *Staff orientation*. Each new employee or volunteer shall, immediately upon commencement of duties, be provided an orientation to the procedures of the school and the policies and procedures of the department regarding the protection of children from abuse and maltreatment.

(h) *Instruction of children*. To the extent required by the provisions of sections 4212, 4314, 4358 and 4403 (11) of the Education Law, and in consideration of the needs and circumstances of the program, schools shall provide instruction to all children in techniques

and procedures which will enable such children to protect themselves from abuse and maltreatment.

(1) Such instruction shall be described in a written plan to be submitted for review and approval within a time frame established by the commissioner, and shall be:

(i) appropriate for the age, individual needs and particular circumstances of children, including the existence of mental, physical, emotional or sensory disabilities;

(ii) provided at different times throughout the year in a manner which will ensure that all children receive such instruction; and

(iii) provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school.

(i) *Variances*. Where the residential component of a school governed by this section is licensed or certified by a State agency other than the State Education Department, a variance may be granted, in whole or in part, from the requirements of subdivisions (b), (d), (e), (f), (g) or (h) of this section with respect to employees or volunteers other than those employed in the educational component of such school, upon a finding that such employees or volunteers are subject to overlapping requirements imposed in regulations adopted by such other State agency for the protection of children in residential care from abuse and maltreatment, or, in the event that such other state agency has not adopted regulations regarding a particular requirement, upon a finding that the school has procedures in place regarding such employees or volunteers which are substantially equivalent to those required by this section. The chief administrator of each such school shall submit an application, on a form and within a time frame prescribed by the commissioner, which shall include, but need not be limited to, a list of all licensing or certifying State agencies and an assurance by the chief administrator that the school is in compliance with the requirements imposed by such other licensing or certifying State agency or agencies, or has procedures in place which are substantially equivalent to those required by this section, regarding the protection of children in residential care from child abuse and maltreatment.